

**Representative Brad L. Dee** proposes the following substitute bill:

**NEW PUBLIC EMPLOYEES' TIER II  
CONTRIBUTORY RETIREMENT ACT**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel R. Liljenquist**

House Sponsor: Brad L. Dee

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**LONG TITLE**

**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act to provide for modified retirement benefits for new public employees and new public safety and firefighter employees.

**Highlighted Provisions:**

This bill:

- defines terms;
- requires that the Retirement Office report when the funded status of the trust fund reaches 100% funded and requires the Retirement and Independent Entities Committee to study employee compensation and benefits;
- provides for a "Tier I" system or plan for which an employee is eligible to participate if the employee initially enters regular full-time employment before July 1, 2011;
- creates a "Tier II" retirement system and plan for which an employee is eligible to participate, if the employee initially enters regular full-time employment on or after July 1, 2011, and which includes a:

\*SBO063S03\*

- 25           • New Public Employees' Tier II Hybrid Retirement System;
- 26           • New Public Employees' Tier II Defined Contribution Plan;
- 27           • New Public Safety and Firefighter Tier II Hybrid Retirement System; and
- 28           • New Public Safety and Firefighter Tier II Defined Contribution Plan;
- 29       ▶ provides that all new public employees including public safety, firefighters,
- 30           governors, and legislators may only participate in a Tier II retirement system or
- 31           plan;
- 32       ▶ provides that new employees may choose between the Tier II hybrid system or the
- 33           Tier II Defined Contribution (DC) plan except governors and legislators are only
- 34           eligible for the Tier II DC plan;
- 35       ▶ provides that the retirement benefits for public employees Tier II hybrid system
- 36           employees include:
  - 37           • full retirement benefits after 35 years of service credit;
  - 38           • 2.5% cost-of-living adjustments on the retirement allowance;
  - 39           • a 1.5% multiplier for each year of service;
  - 40           • a 401(k) employer contribution;
  - 41           • a death benefit; and
  - 42           • a disability benefit;
- 43       ▶ provides that the participating employer shall contribute for public employees Tier
- 44           II employees the percentage of the employee's compensation equal to the
- 45           corresponding Tier I system amortization rate plus 10%;
- 46       ▶ provides that the total public employees' Tier II contribution credited specifically on
- 47           behalf of a Tier II employee is 10% of the employee's salary;
- 48       ▶ provides that the retirement benefits for the public safety and firefighter Tier II
- 49           hybrid system employees include:
  - 50           • full retirement benefits after 25 years of service credit;
  - 51           • 2.5% cost-of-living adjustments on the retirement allowance;
  - 52           • a 1.5% multiplier for each year of service;
  - 53           • a 401(k) employer contribution;
  - 54           • a death benefit;
  - 55           • a line of duty death benefit; and

- 56           • a disability benefit;
- 57           ▶ provides that the participating employer shall contribute for public safety and
- 58           firefighter Tier II employees the percentage of the employee's compensation equal
- 59           to the corresponding Tier I system amortization rate plus 12%;
- 60           ▶ provides that the total Tier II contribution credited specifically on behalf of a public
- 61           safety and firefighter Tier II employee is 12% of the employee's salary;
- 62           ▶ closes for employees who initially enter employment beginning on or after July 1,
- 63           2011, the:
  - 64           • Public Employees' Contributory Retirement System;
  - 65           • Public Employees' Noncontributory Retirement System;
  - 66           • Public Safety Contributory Retirement System;
  - 67           • Public Safety Noncontributory Retirement System;
  - 68           • Firefighters' Retirement System; and
  - 69           • Utah Governors' and Legislators' Retirement System;
- 70           ▶ provides for certain exclusions from membership in the Tier II DC plan; and
- 71           ▶ makes technical changes.

**72 Monies Appropriated in this Bill:**

73           None

**74 Other Special Clauses:**

75           This bill takes effect on July 1, 2010.

**76 Utah Code Sections Affected:**

77           AMENDS:

78           **35A-4-502**, as last amended by Laws of Utah 2008, Chapter 382

79           **49-11-102**, as last amended by Laws of Utah 2009, Chapter 101

80           **49-11-401**, as last amended by Laws of Utah 2005, Chapter 116

81           **49-11-403**, as last amended by Laws of Utah 2006, Chapter 260

82           **49-11-404**, as last amended by Laws of Utah 2008, Chapter 252

83           **49-11-612**, as last amended by Laws of Utah 2009, Chapter 101

84           **49-11-801**, as last amended by Laws of Utah 2008, Chapter 335

85           **49-11-1001**, as enacted by Laws of Utah 2006, Chapter 305

86           **49-12-201**, as renumbered and amended by Laws of Utah 2002, Chapter 250

87        **49-13-201**, as renumbered and amended by Laws of Utah 2002, Chapter 250  
88        **49-14-201**, as last amended by Laws of Utah 2008, Chapter 382  
89        **49-14-202**, as renumbered and amended by Laws of Utah 2002, Chapter 250  
90        **49-15-201**, as last amended by Laws of Utah 2008, Chapter 382  
91        **49-15-202**, as renumbered and amended by Laws of Utah 2002, Chapter 250  
92        **49-16-201**, as last amended by Laws of Utah 2004, Chapter 118  
93        **49-16-202**, as last amended by Laws of Utah 2009, Chapter 101  
94        **49-19-201**, as renumbered and amended by Laws of Utah 2002, Chapter 250  
95        **49-21-201**, as last amended by Laws of Utah 2008, Chapter 252  
96        **49-21-403**, as last amended by Laws of Utah 2008, Chapter 252  
97        **53-7-105**, as last amended by Laws of Utah 2002, Chapter 250  
98        **53-13-108**, as last amended by Laws of Utah 2002, Chapter 250  
99        **53A-1a-512**, as last amended by Laws of Utah 2009, Chapter 165  
100       **67-22-1**, as last amended by Laws of Utah 2008, Chapter 86

101    ENACTS:

102        **49-11-307**, Utah Code Annotated 1953  
103        **49-22-101**, Utah Code Annotated 1953  
104        **49-22-102**, Utah Code Annotated 1953  
105        **49-22-103**, Utah Code Annotated 1953  
106        **49-22-104**, Utah Code Annotated 1953  
107        **49-22-201**, Utah Code Annotated 1953  
108        **49-22-202**, Utah Code Annotated 1953  
109        **49-22-203**, Utah Code Annotated 1953  
110        **49-22-204**, Utah Code Annotated 1953  
111        **49-22-301**, Utah Code Annotated 1953  
112        **49-22-302**, Utah Code Annotated 1953  
113        **49-22-303**, Utah Code Annotated 1953  
114        **49-22-304**, Utah Code Annotated 1953  
115        **49-22-305**, Utah Code Annotated 1953  
116        **49-22-306**, Utah Code Annotated 1953  
117        **49-22-307**, Utah Code Annotated 1953

118        **49-22-308**, Utah Code Annotated 1953  
119        **49-22-309**, Utah Code Annotated 1953  
120        **49-22-401**, Utah Code Annotated 1953  
121        **49-22-402**, Utah Code Annotated 1953  
122        **49-22-501**, Utah Code Annotated 1953  
123        **49-22-502**, Utah Code Annotated 1953  
124        **49-22-601**, Utah Code Annotated 1953  
125        **49-23-101**, Utah Code Annotated 1953  
126        **49-23-102**, Utah Code Annotated 1953  
127        **49-23-103**, Utah Code Annotated 1953  
128        **49-23-104**, Utah Code Annotated 1953  
129        **49-23-201**, Utah Code Annotated 1953  
130        **49-23-202**, Utah Code Annotated 1953  
131        **49-23-301**, Utah Code Annotated 1953  
132        **49-23-302**, Utah Code Annotated 1953  
133        **49-23-303**, Utah Code Annotated 1953  
134        **49-23-304**, Utah Code Annotated 1953  
135        **49-23-305**, Utah Code Annotated 1953  
136        **49-23-306**, Utah Code Annotated 1953  
137        **49-23-307**, Utah Code Annotated 1953  
138        **49-23-308**, Utah Code Annotated 1953  
139        **49-23-401**, Utah Code Annotated 1953  
140        **49-23-402**, Utah Code Annotated 1953  
141        **49-23-501**, Utah Code Annotated 1953  
142        **49-23-502**, Utah Code Annotated 1953  
143        **49-23-503**, Utah Code Annotated 1953  
144        **49-23-601**, Utah Code Annotated 1953

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146        *Be it enacted by the Legislature of the state of Utah:*

147        Section 1. Section **35A-4-502** is amended to read:

148        **35A-4-502. Administration of Employment Security Act.**

149 (1) (a) The department shall administer this chapter through the division.

150 (b) The department may make, amend, or rescind any rules and special orders  
151 necessary for the administration of this chapter.

152 (c) The division may:

153 (i) employ persons;

154 (ii) make expenditures;

155 (iii) require reports;

156 (iv) make investigations;

157 (v) make audits of any or all funds provided for under this chapter when necessary; and

158 (vi) take any other action it considers necessary or suitable to that end.

159 (d) No later than the first day of October of each year, the department shall submit to  
160 the governor a report covering the administration and operation of this chapter during the  
161 preceding calendar year and shall make any recommendations for amendments to this chapter  
162 as the department considers proper.

163 (e) (i) The report required under Subsection (1)(d) shall include a balance sheet of the  
164 moneys in the fund in which there shall be provided, if possible, a reserve against liability in  
165 future years to pay benefits in excess of the then current contributions, which reserve shall be  
166 set up by the division in accordance with accepted actuarial principles on the basis of statistics  
167 of employment, business activity, and other relevant factors for the longest possible period.

168 (ii) Whenever the department believes that a change in contribution or benefit rates  
169 will become necessary to protect the solvency of the fund, it shall promptly inform the  
170 governor and the Legislature and make appropriate recommendations.

171 (2) (a) The department may make, amend, or rescind rules in accordance with Title  
172 63G, Chapter 3, Utah Administrative Rulemaking Act.

173 (b) The director of the division or the director's designee may adopt, amend, or rescind  
174 special orders after appropriate notice and opportunity to be heard. Special orders become  
175 effective 10 days after notification or mailing to the last-known address of the individuals or  
176 concerns affected thereby.

177 (3) The director of the division or the director's designee shall cause to be printed for  
178 distribution to the public:

179 (a) the text of this chapter;

(b) the department's rules pertaining to this chapter;

(c) the department's annual reports to the governor required by Subsection (1)(e); and

(d) any other material the director of the division or the director's designee considers relevant and suitable and shall furnish them to any person upon application.

(4) (a) The division may delegate to any person so appointed the power and authority it considers reasonable and proper for the effective administration of this chapter and may bond any person handling moneys or signing checks under this authority.

(b) The department may, when permissible under federal and state law, make arrangements to voluntarily elect coverage under the United States Civil Service Retirement System or a comparable private retirement plan with respect to past as well as future services of individuals employed under this chapter who:

(i) were hired prior to October 1, 1980; and

(ii) have been retained by the department without significant interruption in the employees' services for the department.

(c) An employee of the department who no longer may participate in a federal or other retirement system as a result of a change in status or appropriation under this chapter may purchase credit with the employee's assets from the federal or other retirement system in which the employee may no longer participate in a retirement system created under:

(i) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act~~[-with the employee's assets from the federal or other retirement system in which the employee may no longer participate.]~~ for a purchase made under this Subsection (4)(c) made prior to July 1, 2011; or

(ii) Title 49, Chapter 22, Public Employees' Tier II Contributory Retirement Act, if the date of purchase under this Subsection (4)(c) is on or after July 1, 2011.

(5) There is created an Employment Advisory Council composed of the members listed in Subsections (5)(a) and (b).

(a) The executive director shall appoint:

(i) not less than five employer representatives chosen from individuals recommended by employers, employer associations, or employer groups;

(ii) not less than five employee representatives chosen from individuals recommended by employees, employee associations, or employee groups; and

(iii) five public representatives chosen at large.

(b) The executive director or the executive director's designee shall serve as a nonvoting member of the council.

(c) The employee representatives shall include both union and nonunion employees who fairly represent the percentage in the labor force of the state.

(d) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.

(e) (i) Except as required by Subsection (5)(e)(ii), as terms of current council members expire, the executive director shall appoint each new member or reappointed member to a four-year term.

(ii) Notwithstanding the requirements of Subsection (5)(e)(i), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.

(f) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(g) The executive director shall terminate the term of any council member who ceases to be representative as designated by the council member's original appointment.

(h) The council shall advise the department and the Legislature in formulating policies and discussing problems related to the administration of this chapter including:

(i) reducing and preventing unemployment;

(ii) encouraging the adoption of practical methods of vocational training, retraining, and vocational guidance;

(iii) monitoring the implementation of the Wagner-Peyser Act;

(iv) promoting the creation and development of job opportunities and the reemployment of unemployed workers throughout the state in every possible way; and

(v) appraising the industrial potential of the state.

(i) The council shall assure impartiality and freedom from political influence in the solution of the problems listed in Subsection (5)(h).

(j) The executive director or the executive director's designee shall serve as chair of the



council and call the necessary meetings.

(k) (i) A member shall receive no compensation or benefits for the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A member may decline to receive per diem and expenses for the member's service.

(l) The department shall provide staff support to the council.

(6) In the discharge of the duties imposed by this chapter, the division director or the director's designee as designated by department rule, may in connection with a disputed matter or the administration of this chapter:

(a) administer oaths and affirmations;

(b) take depositions;

(c) certify to official acts; and

(d) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records necessary as evidence.

(7) (a) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the director of the division or the director's designee shall have jurisdiction to issue to that person an order requiring the person to appear before the director or the director's designee to produce evidence, if so ordered, or give testimony regarding the matter under investigation or in question. Any failure to obey that order of the court may be punished by the court as contempt.

(b) Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in that person's power to do so, in obedience to a subpoena of the director or the director's designee shall be punished as provided in Subsection 35A-1-301(1)(b). Each day the violation continues is a separate offense.

(c) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

(8) (a) In the administration of this chapter, the division shall cooperate with the United States Department of Labor to the fullest extent consistent with the provisions of this chapter and shall take action, through the adoption of appropriate rules by the department and administrative methods and standards, as necessary to secure to this state and its citizens all advantages available under the provisions of:

(i) the Social Security Act that relate to unemployment compensation;

(ii) the Federal Unemployment Tax Act; and

(iii) the Federal-State Extended Unemployment Compensation Act of 1970.

(b) In the administration of Section 35A-4-402, which is enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. 3304, the division shall take any action necessary to ensure that the section is interpreted and applied to meet the requirements of the federal act, as interpreted by the United States Department of Labor and to secure to this state the full reimbursement of the federal share of extended and regular benefits paid under this chapter that are reimbursable under the federal act.

Section 2. Section **49-11-102** is amended to read:

**49-11-102. Definitions.**

As used in this title:

(1) (a) "Active member" means a member who is employed or who has been employed by a participating employer within the previous 120 days.

(b) "Active member" does not include retirees.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of mortality tables as recommended by the actuary and adopted by the executive director, including regular interest.

(3) "Actuarial interest rate" means the interest rate as recommended by the actuary and adopted by the board upon which the funding of system costs and benefits are computed.

(4) (a) "Agency" means:

(i) a department, division, agency, office, authority, commission, board, institution, or hospital of the state;

(ii) a county, municipality, school district, local district, or special service district;

(iii) a state college or university; or

(iv) any other participating employer.

(b) "Agency" does not include an entity listed under Subsection (4)(a)(i) that is a subdivision of another entity listed under Subsection (4)(a).

(5) "Allowance" or "retirement allowance" means the pension plus the annuity, including any cost of living or other authorized adjustments to the pension and annuity.

(6) "Alternate payee" means a member's former spouse or family member eligible to receive payments under a Domestic Relations Order in compliance with Section 49-11-612.

(7) "Amortization rate" means the board certified percent of salary required to amortize the unfunded actuarial accrued liability in accordance with policies established by the board upon the advice of the actuary.

~~(7)~~ (8) "Annuity" means monthly payments derived from member contributions.

~~(8)~~ (9) "Appointive officer" means an employee appointed to a position for a definite and fixed term of office by official and duly recorded action of a participating employer whose appointed position is designated in the participating employer's charter, creation document, or similar document, and who earns during the first full month of the term of office \$500 or more, indexed as of January 1, 1990, as provided in Section 49-12-407.

~~(9)~~ (10) (a) "At-will employee" means a person who is employed by a participating employer and:

(i) who is not entitled to merit or civil service protection and is generally considered exempt from a participating employer's merit or career service personnel systems;

(ii) whose on-going employment status is entirely at the discretion of the person's employer; or

(iii) who may be terminated without cause by a designated supervisor, manager, or director.

(b) "At-will employee" does not include a career employee who has obtained a reasonable expectation of continued employment based on inclusion in a participating employer's merit system, civil service protection system, or career service personnel systems, policies, or plans.

~~(10)~~ (11) "Beneficiary" means any person entitled to receive a payment under this title through a relationship with or designated by a member, participant, covered individual, or alternate payee of a defined contribution plan.

335           ~~[(11)]~~ (12) "Board" means the Utah State Retirement Board established under Section  
336 49-11-202.

337           ~~[(12)]~~ (13) "Board member" means a person serving on the Utah State Retirement  
338 Board as established under Section 49-11-202.

339           (14) "Certified contribution rate" means the board certified percent of salary paid on  
340 behalf of an active member to the office to maintain the system on a financially and actuarially  
341 sound basis.

342           ~~[(13)]~~ (15) "Contributions" means the total amount paid by the participating employer  
343 and the member into a system or to the Utah Governors' and Legislators' Retirement Plan under  
344 Chapter 19, Utah Governors' and Legislators' Retirement Act.

345           ~~[(14)]~~ (16) "Council member" means a person serving on the Membership Council  
346 established under Section 49-11-202.

347           ~~[(15)]~~ (17) "Covered individual" means any individual covered under Chapter 20,  
348 Public Employees' Benefit and Insurance Program Act.

349           ~~[(16)]~~ (18) "Current service" means covered service as defined in Chapters 12, 13, 14,  
350 15, 16, 17, 18, and 19.

351           ~~[(17)]~~ (19) "Defined benefit" or "defined benefit plan" or "defined benefit system"  
352 means a system or plan offered under this title to provide a specified allowance to a retiree or a  
353 retiree's spouse after retirement that is based on a set formula involving one or more of the  
354 following factors:

- 355           (a) years of service;  
356           (b) final average monthly salary; or  
357           (c) a retirement multiplier.

358           ~~[(18)]~~ (20) "Defined contribution" or "defined contribution plan" means any defined  
359 contribution plan or deferred compensation plan authorized under the Internal Revenue Code  
360 and administered by the board.

361           ~~[(19)]~~ (21) "Educational institution" means a political subdivision or instrumentality of  
362 the state or a combination thereof primarily engaged in educational activities or the  
363 administration or servicing of educational activities, including:

- 364           (a) the State Board of Education and its instrumentalities;  
365           (b) any institution of higher education and its branches;

(c) any school district and its instrumentalities;

(d) any vocational and technical school; and

(e) any entity arising out of a consolidation agreement between entities described under this Subsection ~~[(19)]~~ (21).

~~[(20)]~~ (22) (a) "Employer" means any department, educational institution, or political subdivision of the state eligible to participate in a government-sponsored retirement system under federal law.

(b) "Employer" may also include an agency financed in whole or in part by public funds.

~~[(21)]~~ (23) "Exempt employee" means an employee working for a participating employer:

(a) who is not eligible for service credit under Section 49-12-203, 49-13-203, 49-14-203, 49-15-203, or 49-16-203; and

(b) for whom a participating employer is not required to pay contributions or nonelective contributions.

~~[(22)]~~ (24) "Final average monthly salary" means the amount computed by dividing the compensation received during the final average salary period under each system by the number of months in the final average salary period.

~~[(23)]~~ (25) "Fund" means any fund created under this title for the purpose of paying benefits or costs of administering a system, plan, or program.

~~[(24)]~~ (26) (a) "Inactive member" means a member who has not been employed by a participating employer for a period of at least 120 days.

(b) "Inactive member" does not include retirees.

(27) (a) "Initially entering" means hired, appointed, or elected for the first time, in current service as a member with any participating employer.

(b) "Initially entering" does not include a person who has any prior service credit on file with the office.

~~[(25)]~~ (28) (a) "Member" means a person, except a retiree, with contributions on deposit with a system, the Utah Governors' and Legislators' Retirement Plan under Chapter 19, Utah Governors' and Legislators' Retirement Act, or with a terminated system.

(b) "Member" also includes leased employees within the meaning of Section 414(n)(2)

of the Internal Revenue Code, if the employees have contributions on deposit with the office. If leased employees constitute less than 20% of the participating employer's work force that is not highly compensated within the meaning of Section 414(n)(5)(c)(ii), Internal Revenue Code, "member" does not include leased employees covered by a plan described in Section 414(n)(5) of the federal Internal Revenue Code.

~~[(26)]~~ (29) "Member contributions" means the sum of the contributions paid to a system or the Utah Governors' and Legislators' Retirement Plan, including refund interest if allowed by a system, and which are made by:

(a) the member; and

(b) the participating employer on the member's behalf under Section 414(h) of the Internal Revenue Code.

~~[(27)]~~ (30) "Nonelective contribution" means an amount contributed by a participating employer into a participant's defined contribution account.

~~[(28)]~~ (31) "Office" means the Utah State Retirement Office.

~~[(29)]~~ (32) "Participant" means an individual with voluntary deferrals or nonelective contributions on deposit with the defined contribution plans administered under this title.

~~[(30)]~~ (33) "Participating employer" means a participating employer, as defined by Chapters 12, 13, 14, 15, 16, 17, and 18, or an agency financed in whole or in part by public funds which is participating in a system or plan as of January 1, 2002.

~~[(31)]~~ (34) "Pension" means monthly payments derived from participating employer contributions.

~~[(32)]~~ (35) "Plan" means the Utah Governors' and Legislators' Retirement Plan created by Chapter 19, Utah Governors' and Legislators' Retirement Act, the New Public Employees' Tier II Defined Contribution Plan created by Chapter 22, Part 4, Tier II Defined Contribution Plan, the New Public Safety and Firefighter Tier II Defined Contribution Plan created by Chapter 23, Part 4, Tier II Defined Contribution Plan, or the defined contribution plans created under Section 49-11-801.

~~[(33)]~~ (36) (a) "Political subdivision" means any local government entity, including cities, towns, counties, and school districts, but only if the subdivision is a juristic entity that is legally separate and distinct from the state and only if its employees are not by virtue of their relationship to the entity employees of the state.

(b) "Political subdivision" includes local districts, special service districts, or authorities created by the Legislature or by local governments, including the office.

(c) "Political subdivision" does not include a project entity created under Title 11, Chapter 13, Interlocal Cooperation Act, that was formed prior to July 1, 1987.

~~[(34)]~~ (37) "Program" means the Public Employees' Insurance Program created under Chapter 20, Public Employees' Benefit and Insurance Program Act, or the Public Employees' Long-Term Disability program created under Chapter 21, Public Employees' Long-Term Disability Act.

~~[(35)]~~ (38) "Public funds" means those funds derived, either directly or indirectly, from public taxes or public revenue, dues or contributions paid or donated by the membership of the organization, used to finance an activity whose objective is to improve, on a nonprofit basis, the governmental, educational, and social programs and systems of the state or its political subdivisions.

~~[(36)]~~ (39) "Qualified defined contribution plan" means a defined contribution plan that meets the requirements of Section 401(k) or Section 403(b) of the Internal Revenue Code.

~~[(37)]~~ (40) "Refund interest" means the amount accrued on member contributions at a rate adopted by the board.

~~[(38)]~~ (41) "Retiree" means an individual who has qualified for an allowance under this title.

~~[(39)]~~ (42) "Retirement" means the status of an individual who has become eligible, applies for, and is entitled to receive an allowance under this title.

~~[(40)]~~ (43) "Retirement date" means the date selected by the member on which the member's retirement becomes effective with the office.

~~[(41)]~~ (44) "Service credit" means:

(a) the period during which an employee is employed and compensated by a participating employer and meets the eligibility requirements for membership in a system or the Utah Governors' and Legislators' Retirement Plan, provided that any required contributions are paid to the office; and

(b) periods of time otherwise purchasable under this title.

~~[(42)]~~ (45) "System" means the individual retirement systems created by Chapter 12, Public Employees' Contributory Retirement Act, Chapter 13, Public Employees'

Noncontributory Retirement Act, Chapter 14, Public Safety Contributory Retirement Act, Chapter 15, Public Safety Noncontributory Retirement Act, Chapter 16, Firefighters' Retirement Act, Chapter 17, Judges' Contributory Retirement Act, Chapter 18, Judges' Noncontributory Retirement Act, and Chapter 19, Utah Governors' and Legislators' Retirement Act[-], the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 22, Part 3, Tier II Hybrid Retirement System, and the defined benefit portion of the Tier II Hybrid Retirement System under Chapter 23, Part 3, Tier II Hybrid Retirement System.

(46) "Tier I" means a system or plan under this title for which an employee is eligible to participate if the employee initially enters regular full-time employment before July 1, 2011.

(47) (a) "Tier II" means a system or plan under this title provided in lieu of a Tier I system or plan for which an employee is eligible to participate, if the employee initially enters regular full-time employment on or after July 1, 2011.

(b) "Tier II" includes:

(i) the Tier II hybrid system established under:

(A) Chapter 22, Part 3, Tier II Hybrid Retirement System; or

(B) Chapter 23, Part 3, Tier II Hybrid Retirement System; and

(ii) the Tier II Defined Contribution Plan (Tier II DC Plan) established under:

(A) Chapter 22, Part 4, Tier II Defined Contribution Plan; or

(B) Chapter 23, Part 4, Tier II Defined Contribution Plan.

(48) "Unfunded actuarial accrued liability" or "UAAL":

(a) is determined by the system's actuary; and

(b) means the excess, if any, of the accrued liability of a retirement system over the actuarial value of its assets.

~~[(43)]~~ (49) "Voluntary deferrals" means an amount contributed by a participant into that participant's defined contribution account.

Section 3. Section **49-11-307** is enacted to read:

**49-11-307. Report on funded status -- Study of compensation.**

(1) (a) The office shall report the funded status of the Utah State Retirement Investment Fund to the Retirement and Independent Entities Committee created under Section 63E-1-201.

(b) The report under Subsection (1)(a) shall be made at least annually or as requested



by the committee.

(2) (a) If the Utah State Retirement Investment Fund reaches a funded status of 100%, the office shall make a report to that effect.

(b) The report shall be provided to the governor, the board, the president of the Senate, the speaker of the House of Representatives, and to each member and staff of the Retirement and Independent Entities Committee created under Section 63E-1-201.

(4) Upon receipt of the report under Subsection (2)(b), the committee shall conduct a study on participating employee compensation and benefits to determine the need for adjustments in retirement benefits, salary, and other benefits for the recruitment and retention of a qualified workforce.

(5) The committee shall report any findings and recommendations to the Legislative Management Committee.

Section 4. Section **49-11-401** is amended to read:

**49-11-401. Transfer of service credit -- Eligibility for service credit --  
Computation of service credit -- Retirement from most recent system.**

(1) (a) The office shall make the transfer of service credit, together with related member and participating employer contributions, from one system to another upon terms and conditions established by the board.

(b) The terms and conditions may not result in a loss of accrued benefits.

(2) Transfer of employment from a position covered by one system to a position covered by another system does not cause the employee to lose active member status.

(3) In the accrual of service credit, the following provisions apply:

(a) A person employed and compensated by a participating employer who meets the eligibility requirements for membership in a system or the Utah Governors' and Legislators' Retirement Plan shall receive service credit for the term of the employment provided that all required contributions are paid to the office.

(b) An allowance or other benefit may not accrue under this title which is based upon the same period of employment as has been the basis for any retirement benefits under some other public retirement system.

(c) The board shall fix the minimum time per day, per month, and per year upon the basis of which one year of service and proportionate parts of a year shall be credited toward

521 qualification for retirement. Service may be computed on a fiscal or calendar year basis and  
522 portions of years served shall be accumulated and counted as service. In any event, all of the  
523 service rendered in any one fiscal or calendar year may not count for more than one year.

524 (d) Service credit shall be accrued on a fiscal or calendar year basis as determined by  
525 the participating employer.

526 (e) A member may not accrue more than one year of service credit per fiscal or  
527 calendar year as determined by the office.

528 (f) Fractions of years of service credit shall be accumulated and counted in proportion  
529 to the work performed.

530 (4) The office may estimate the amount of service credit, compensation, or age of any  
531 member, participant, or alternate payee, if information is not contained in the records.

532 (5) A member shall retire from the system which most recently covered the member.

533 (6) (a) Under no circumstances may service credit earned by a member under Chapter  
534 22, New Public Employees' Tier II Contributory Retirement Act, or Chapter 23, New Public  
535 Safety and Firefighter Tier II Contributory Retirement Act, be transferable to any other system  
536 or plan under this title.

537 (b) Under no circumstances may service credit earned by a member under one of the  
538 following systems be transferable to the system created under Chapter 22, New Public  
539 Employees' Tier II Contributory Retirement Act, or under Chapter 23, New Public Safety and  
540 Firefighter Tier II Contributory Retirement Act:

541 (i) Chapter 12, Public Employees' Contributory Retirement Act;

542 (ii) Chapter 13, Public Employees' Noncontributory Retirement Act;

543 (iii) Chapter 14, Public Safety Contributory Retirement Act;

544 (iv) Chapter 15, Public Safety Noncontributory Retirement Act;

545 (v) Chapter 16, Firefighters' Retirement Act; or

546 (vi) Chapter 19, Utah Governors' and Legislators' Retirement Act.

547 Section 5. Section **49-11-403** is amended to read:

548 **49-11-403. Purchase of public service credit not otherwise qualifying for benefit.**

549 (1) A member, a participating employer, or a member and a participating employer  
550 jointly may purchase service credit equal to the period of the member's employment in the  
551 following:

- 552 (a) United States federal employment;
- 553 (b) employment in a private school based in the United States, if the member received  
554 an employer paid retirement benefit for the employment;
- 555 (c) public employment in another state or territory of the United States which qualifies  
556 the member for membership in the public plan or system covering the employment, but only if  
557 the member does not qualify for any retirement benefits based on the employment;
- 558 (d) forfeited service credit in this state if the member does not qualify for an allowance  
559 based on the service credit;
- 560 (e) full-time public service while on an approved leave of absence;
- 561 (f) the period of time for which disability benefits were paid if:
- 562 (i) the member was receiving:
- 563 (A) long-term disability benefits;
- 564 (B) short-term disability benefits; or
- 565 (C) worker's compensation disability benefits; and
- 566 (ii) the member's employer had not entered into a benefit protection contract under  
567 Section 49-11-404 during the period the member was disabled due to sickness or accident; or
- 568 (g) employment covered by a Teachers Insurance and Annuity Association of America  
569 retirement plan if the member forfeits any retirement benefit from that retirement plan for the  
570 period of employment to be purchased under this Subsection (1)(g).
- 571 (2) A member shall have:
- 572 (a) at least four years of service credit before a purchase can be made under this  
573 section; and
- 574 (b) forfeited service credit under any other retirement system or plan based on the  
575 employment for which service credit is being purchased.
- 576 (3) (a) To purchase credit under this section, the member, a participating employer, or a  
577 member and a participating employer jointly shall make payment to the system under which the  
578 member is currently covered.
- 579 (b) The amount of the payment shall be determined by the office based on a formula  
580 that is:
- 581 (i) recommended by the actuary; and
- 582 (ii) adopted by the board.

(4) The purchase may be made through payroll deductions or through a lump sum deposit based upon the present value of future payments.

(5) Total payment must be completed prior to the member's effective date of retirement or service credit will be prorated in accordance with the amount paid.

(6) (a) If any of the factors used to determine the cost of a service credit purchase change at or before the member's retirement date, the cost of the purchase shall be recalculated at the time of retirement.

(b) If the recalculated cost exceeds the amount paid for the purchase, the member, a participating employer, or a member and a participating employer jointly may:

(i) pay the increased cost, plus interest, to receive the full amount of service credit; or

(ii) not pay the increased cost and have the purchased service credit prorated.

(7) If the recalculated cost under Subsection (6) is less than the amount paid for the purchase, the office shall refund the excess payment to the member or participating employer who paid for the purchase.

(8) (a) The board may adopt rules under which a member may make the necessary payments to the office for purchases under this title as permitted by federal law.

(b) The office may reject any payments if the office determines the tax status of the system, plans, or programs would be jeopardized by allowing the payment.

(9) Account balances created under Section 49-22-303, 49-22-401, 49-23-302, or 49-23-401 may not be used to purchase service credit for a benefit under Sections 49-22-304, 49-22-305, 49-23-303, and 49-23-304.

Section 6. Section **49-11-404** is amended to read:

**49-11-404. Benefit protection contract authorized -- Annual report required.**

(1) (a) A participating employer may establish a salary protection program under which its employees are paid during periods of disability.

(b) If a salary protection program is established, a participating employer may enter into benefit protection contracts with the office.

(c) A salary protection program shall:

(i) pay benefits based on the disabled member's rate of compensation at the time of disability;

(ii) be substantially equivalent to the long-term disability programs offered under

614 Chapter 21, Public Employees' Long-Term Disability Act; and

615 (iii) comply with requirements adopted by the board.

616 (2) A benefit protection contract shall allow:

617 (a) the disabled member to be considered an active member in a system and continue to  
618 accrue service credit and salary credit based on the member's rate of pay in effect at the time  
619 disability commences;

620 (b) the office to require participating employer contributions to be paid before granting  
621 service credit and salary credit to the member;

622 (c) the disabled member to remain eligible during the contract period for any benefits  
623 provided by the system that covers the member; and

624 (d) the benefit for the disabled member to be improved by the annual cost-of-living  
625 increase factor applied to retired members of the system that covered the member on the date  
626 the member is eligible to receive benefits under a benefit protection contract.

627 (3) (a) The office shall establish the manner and times when employer contributions  
628 are paid.

629 (b) A failure to make the required payments is cause for the office to cancel a contract.

630 (c) Service credit and salary credit granted and accrued up to the time of cancellation  
631 may not be forfeited.

632 (4) For an employee covered under Chapter 22, New Public Employees' Tier II  
633 Contributory Retirement Act, or Chapter 23, New Public Safety and Firefighter Tier II  
634 Contributory Retirement Act, a benefit protection contract shall allow:

635 (a) for the defined benefit portion for a member covered under Chapter 22, Part 3, Tier  
636 II Hybrid Retirement System, or Chapter 23, Part 3, Tier II Hybrid Retirement System:

637 (i) the disabled member to be considered an active member in a system and continue to  
638 accrue service credit and salary credit based on the member's rate of pay in effect at the time  
639 disability commences;

640 (ii) the office to require participating employer contributions to be paid before granting  
641 service credit and salary credit to the member;

642 (iii) the disabled member to remain eligible during the contract period for any benefits  
643 provided by the system that covers the member; and

644 (iv) the benefit for the disabled member to be improved by the annual cost-of-living

increase factor applied to retired members of the system that covered the member on the date the member is eligible to receive benefits under a benefit protection contract; and

(b) for the defined contribution portion for a member covered under Chapter 22, Part 3, Tier II Hybrid Retirement System or Chapter 23, Part 3, Tier II Hybrid Retirement System or for a participant covered under Chapter 22, Part 4, Tier II Defined Contribution Plan or Chapter 23, Part 4, Tier II Defined Contribution Plan, the office to require participating employers to continue making the nonelective contributions on behalf of the disabled member or participant in the amounts specified in Subsection 49-22-303(1)(a), 49-22-401(1), 49-23-302(1)(a), or 49-23-401(1).

~~[(4)]~~ (5) A participating employer that has entered into a benefit protection contract under this section shall submit an annual report to the office which identifies:

(a) the employees receiving long-term disability benefits under policies initiated by the participating employer and approved under the benefit protection contract;

(b) the employees that have applied for long-term disability benefits and who are waiting approval; and

(c) the insurance carriers that are actively providing long-term disability benefits.

~~[(5)]~~ (6) If an employer fails to provide the annual report required under Subsection ~~[(4)]~~ (5), the benefits that would have accrued under the benefit protection contract shall be forfeited.

~~[(6)]~~ (7) The board may adopt rules to implement and administer this section.

Section 7. Section **49-11-612** is amended to read:

**49-11-612. Domestic relations order benefits -- Nonassignability of benefits or payments -- Exemption from legal process.**

(1) As used in this section, "domestic relations order benefits" means:

(a) an allowance;

(b) a defined contribution account established under ~~[Title 49,]~~ :

(i) Chapter 11, Part 8, Defined Contribution Plans;

(ii) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or

(iii) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act;

(c) a continuing monthly death benefit established under:

- 676 (i) ~~[Title 49,]~~ Chapter 14, Part 5, Death Benefit;  
677 (ii) ~~[Title 49,]~~ Chapter 15, Part 5, Death Benefit;  
678 (iii) ~~[Title 49,]~~ Chapter 16, Part 5, Death Benefit;  
679 (iv) ~~[Title 49,]~~ Chapter 17, Part 5, Death Benefit;  
680 (v) ~~[Title 49,]~~ Chapter 18, Part 5, Death Benefit; or  
681 (vi) ~~[Title 49,]~~ Chapter 19, Part 5, Death Benefit;  
682 (d) a death benefit provided under a group insurance policy under:  
683 (i) ~~[Title 49,]~~ Chapter 12, Part 5, Death Benefit; ~~[or]~~  
684 (ii) ~~[Title 49,]~~ Chapter 13, Part 5, Death Benefit; ~~[or]~~  
685 (iii) Chapter 22, Part 5, Death Benefit; or  
686 (iv) Chapter 23, Part 5, Death Benefit; or  
687 (e) a refund of member contributions upon termination.
- 688 (2) Except as provided in Subsections (3), (4), and (5), the right of any member, retiree,  
689 participant, covered individual, or beneficiary to any retirement benefit, retirement payment, or  
690 any other retirement right accrued or accruing under this title and the assets of the funds created  
691 by this title are not subject to alienation or assignment by the member, retiree, participant, or  
692 their beneficiaries and are not subject to attachment, execution, garnishment, or any other legal  
693 or equitable process.
- 694 (3) The office may, upon the request of the retiree, deduct from the retiree's allowance  
695 insurance premiums or other dues payable on behalf of the retiree, but only to those entities  
696 that have received the deductions prior to February 1, 2002.
- 697 (4) (a) The office shall provide for the division of domestic relations order benefits  
698 with former spouses and family members under an order of a court of competent jurisdiction  
699 with respect to domestic relations matters on file with the office.
- 700 (b) The court order shall specify the manner in which the domestic relations order  
701 benefits shall be partitioned, whether as a fixed amount or as a percentage of the benefit.
- 702 (c) Domestic relations order benefits split under a domestic relations order are subject  
703 to the following:
- 704 (i) the amount to be paid or the period for which payments shall be made under the  
705 original domestic relations order may not be altered if the alteration affects the actuarial  
706 calculation of the allowance;

(ii) payments to an alternate payee shall begin at the time the member or beneficiary begins receiving payments; and

(iii) the alternate payee shall receive payments in the same form as allowances received by the member or beneficiary.

(d) A court order under this section may not be issued more than 12 months after the death of the member.

(5) In accordance with federal law, the board may deduct the required amount from any benefit, payment, or other right accrued or accruing to any member or beneficiary of a system, plan, or program under this title to offset any amount that member or beneficiary owes to a system, plan, or program administered by the board.

(6) The board shall make rules to implement this section.

Section 8. Section **49-11-801** is amended to read:

**49-11-801. Defined contribution plans authorized -- Subject to federal and state laws -- Rules to implement this provision -- Costs of administration -- Limitations on eligibility -- Protection of tax status.**

(1) (a) The board shall establish and administer defined contribution plans established under the Internal Revenue Code.

(b) Voluntary deferrals and nonelective contributions shall be permitted according to the provisions of these plans as established by the board.

(c) ~~[The]~~ Except as provided in Subsections 49-22-302(2)(a), 49-22-401(3)(a), 49-23-302(2)(a), and 49-23-401(3)(a), the defined contribution account balance is vested in the participant.

(2) (a) Voluntary deferrals and nonelective contributions shall be posted to the participant's account.

(b) ~~[Participants]~~ Except as provided in Subsections 49-22-303(3), 49-22-401(4), 49-23-302(3), and 49-23-401(4), participants may direct the investment of their account in the investment options established by the board and in accordance with federal and state law.

(3) (a) The board may make rules and create plan documents to implement and administer this section.

(b) The board may adopt rules under which a participant may put money into a defined contribution plan as permitted by federal law.



(c) The office may reject any payments if the office determines the tax status of the systems, plans, or programs would be jeopardized by allowing the payment.

(d) Costs of administration shall be paid as established by the board.

(4) Voluntary deferrals and nonelective contributions may be invested separately or in conjunction with the Utah State Retirement Investment Fund.

(5) The board or office may take actions necessary to protect the tax qualified status of the systems, plans, and programs under its control, including the movement of individuals from defined contribution plans to defined benefit systems or the creation of excess benefit plans authorized by federal law.

(6) The office may, at its sole discretion, correct errors made in the administration of its defined contribution plans.

Section 9. Section **49-11-1001** is amended to read:

**49-11-1001. Partial lump-sum payment option.**

(1) [At] Except as provided in Subsection (5), at the time of application for retirement, a member may elect to receive a lump-sum payment of a portion of the member's retirement allowance equal to 12 or 24 months of the member's allowance to be paid upon retirement.

(2) The member's allowance shall be reduced to reflect the actuarial value of the lump-sum received under Subsection (1).

(3) A member who has received a lump-sum payment under this section is not eligible for another lump-sum payment under this section.

(4) The board may make rules to implement this section.

(5) A member or participant of a system or plan under Chapter 22, New Public Employees' Tier II Contributory Retirement Act, or Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act, is not eligible to make an election under this section.

Section 10. Section **49-12-201** is amended to read:

**49-12-201. System membership -- Eligibility.**

(1) A regular full-time employee of a participating employer is eligible for service credit in this system upon the later of:

(a) the date on which the participating employer began participating in this system; or

(b) the effective date of employment of the regular full-time employee with the

participating employer.

(2) Beginning July 1, 1986, a person entering employment with the state and its educational institutions may not participate in this system.

(3) Notwithstanding the provisions of Subsection (1), a person initially entering employment with a participating employer on or after July 1, 2011, may not participate in this system.

Section 11. Section **49-13-201** is amended to read:

**49-13-201. System membership -- Eligibility.**

(1) Beginning July 1, 1986, the state and its educational institutions shall participate in this system.

(a) A person entering regular full-time employment with the state or its educational institutions after July 1, 1986, but before July 1, 2011, is eligible for service credit in this system.

(b) A regular full-time employee of the state or its educational institutions prior to July 1, 1986, may either become eligible for service credit in this system or remain eligible for service in the system established under Chapter 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board in accordance with this chapter.

(2) An employer, other than the state and its educational institutions, may participate in this system except that once an employer elects to participate in this system, that election is irrevocable and the election must be made before July 1, 2011.

(a) ~~[A]~~ Until June 30, 2011, a person initially entering regular full-time employment with a participating employer which elects to participate in this system is eligible for service credit in this system.

(b) A person in regular full-time employment with a participating employer prior to the participating employer's election to participate in this system may either become eligible for service credit in this system or remain eligible for service in the system established under Chapter 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board in accordance with this chapter.

(3) Notwithstanding the provisions of Subsections (1) and (2), a person initially entering employment with a participating employer on or after July 1, 2011, may not participate in this system.

Section 12. Section **49-14-201** is amended to read:

**49-14-201. System membership -- Eligibility.**

(1) Except as provided in Section 49-15-201, a public safety service employee of a participating employer participating in this system is eligible for service credit in this system at the earliest of:

(a) July 1, 1969, if the public safety service employee was employed by the participating employer on July 1, 1969, and the participating employer was participating in this system on that date;

(b) the date the participating employer begins participating in this system if the public safety service employee was employed by the participating employer on that date; or

(c) the date the public safety service employee is employed by the participating employer and is eligible to perform public safety service, except that a public safety service employee initially entering employment with a participating employer on or after July 1, 2011, may not participate in this system.

(2) (a) (i) A participating employer that has public safety service and firefighter service employees that require cross-training and duty shall enroll those dual purpose employees in the system in which the greatest amount of time is actually worked.

(ii) The employees shall either be full-time public safety service or full-time firefighter service employees of the participating employer.

(b) (i) Prior to transferring a dual purpose employee from one system to another, the participating employer shall receive written permission from the office.

(ii) The office may request documentation to verify the appropriateness of the transfer.

(3) The board may combine or segregate the actuarial experience of participating employers in this system for the purpose of setting contribution rates.

(4) (a) (i) Each participating employer participating in this system shall annually submit to the office a schedule indicating the positions to be covered under this system in accordance with this chapter.

(ii) The office may require documentation to justify the inclusion of any position under this system.

(b) If there is a dispute between the office and a participating employer or employee over any position to be covered, the disputed position shall be submitted to the Peace Officer

Standards and Training Council established under Section 53-6-106 for determination.

(c) (i) The Peace Officer Standards and Training Council's authority to decide eligibility for public safety service credit is limited to claims for coverage under this system for time periods after July 1, 1989.

(ii) A decision of the Peace Officer Standards and Training Council may not be applied to service credit earned in another system prior to July 1, 1989.

(iii) Except as provided under Subsection (4)(c)(iv), a decision of the Peace Officer Standards and Training Council granting a position coverage under this system may only be applied prospectively from the date of that decision.

(iv) A decision of the Peace Officer Standards and Training Council granting a position coverage under this system may be applied retroactively only if:

(A) the participating employer covered other similarly situated positions under this system during the time period in question; and

(B) the position otherwise meets all eligibility requirements for receiving service credit in this system during the period for which service credit is to be granted.

(5) The Peace Officer Standards and Training Council may use a subcommittee to provide a recommendation to the council in determining disputes between the office and a participating employer or employee over a position to be covered under this system.

(6) The Peace Officer Standards and Training Council shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

(7) A public safety employee who is transferred or promoted to an administration position not covered by this system shall continue to earn public safety service credit in this system as long as the employee remains employed in the same department.

(8) Any employee who is reassigned to the Department of Technology Services or to the Department of Human Resource Management, and who was a member of this system, shall be entitled to remain a member of this system.

(9) (a) To determine that a position is covered under this system, the office and, if a coverage dispute arises, the Peace Officer Standards and Training Council shall find that the position requires the employee to:

(i) place the employee's life or personal safety at risk; and

(ii) complete training as provided in Section 53-13-103, 53-13-104, or 53-13-105.

(b) If a position satisfies the requirements of Subsection (9)(a), the office and the Peace Officer Standards and Training Council shall consider whether or not the position requires the employee to:

(i) perform duties that consist primarily of actively preventing or detecting crime and enforcing criminal statutes or ordinances of this state or any of its political subdivisions;

(ii) perform duties that consist primarily of providing community protection; and

(iii) respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.

(10) If a subcommittee is used to recommend the determination of disputes to the Peace Officer Standards and Training Council, the subcommittee shall comply with the requirements of Subsection (9) in making its recommendation.

(11) A final order of the Peace Officer Standards and Training Council regarding a dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative Procedures Act.

(12) Except as provided under Subsection (13), if a participating employer's public safety service employees are not covered by this system or under Chapter 15, Public Safety Noncontributory Retirement Act, as of January 1, 1998, those public safety service employees who may otherwise qualify for membership in this system shall, at the discretion of the participating employer, remain in their current retirement system.

(13) (a) A public safety service employee employed by an airport police department, which elects to cover its public safety service employees under the Public Safety Noncontributory Retirement System under Subsection (12), may elect to remain in the public safety service employee's current retirement system.

(b) The public safety service employee's election to remain in the current retirement system under Subsection (13)(a):

(i) shall be made at the time the employer elects to move its public safety service employees to a public safety retirement system;

(ii) documented by written notice to the participating employer; and

(iii) is irrevocable.

(14) Notwithstanding any other provision of this section, a person initially entering employment with a participating employer on or after July 1, 2011, may not participate in this

893 system.

894 Section 13. Section **49-14-202** is amended to read:

895 **49-14-202. Participation of employers -- Requirements -- Supplemental programs**  
896 **-- Full participation in system.**

897 (1) An employer that employs public safety service employees and is required by  
898 Section 49-12-202 or 49-13-202 to be a participating employer in the Public Employees'  
899 Contributory Retirement System or the Public Employees' Noncontributory Retirement System  
900 shall cover all its public safety service employees under one of the following systems or plans:

- 901 (a) Chapter 12, Public Employees' Contributory Retirement Act;  
902 (b) Chapter 13, Public Employees' Noncontributory Retirement Act;  
903 (c) Chapter 14, Public Safety Contributory Retirement Act; ~~[or]~~  
904 (d) Chapter 15, Public Safety Noncontributory Retirement Act~~[-];~~ or  
905 (e) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.

906 (2) An employer that covers its public safety service employees under Subsection  
907 (1)(c) is a participating employer in this system.

908 (3) If a participating employer under Subsection (1) covers any of its public safety  
909 service employees under the Public Safety Contributory Retirement System or the Public  
910 Safety Noncontributory Retirement System, that participating employer shall cover all of its  
911 public safety service employees under one of those systems, except for a public safety service  
912 employee initially entering employment with a participating employer on or after July 1, 2011.

913 (4) A participating employer may not withdraw from this system.

914 (5) In addition to their participation in the system, participating employers may provide  
915 or participate in any additional public or private retirement, supplemental or defined  
916 contribution plan, either directly or indirectly, for their employees.

917 (6) An employer may not elect to participate in this system after July 1, 1989.

918 Section 14. Section **49-15-201** is amended to read:

919 **49-15-201. System membership -- Eligibility.**

920 (1) (a) A public safety service employee employed by the state after July 1, 1989, but  
921 before July 1, 2011, is eligible for service credit in this system.

922 (b) A public safety service employee employed by the state prior to July 1, 1989, may  
923 either elect to receive service credit in this system or continue to receive service credit under

the system established under Chapter 14, Public Safety Contributory Retirement Act, by following the procedures established by the board under this chapter.

(2) (a) Public safety service employees of a participating employer other than the state that elected on or before July 1, 1989, to remain in the Public Safety Contributory Retirement System shall be eligible only for service credit in that system.

(b) (i) A participating employer other than the state that elected on or before July 1, 1989, to participate in this system shall, have allowed, prior to July 1, 1989, a public safety service employee to elect to participate in either this system or the Public Safety Contributory Retirement System.

(ii) Except as expressly allowed by this title, the election of the public safety service employee is final and may not be changed.

(c) A public safety service employee hired by a participating employer other than the state after July 1, 1989, but before July 1, 2011, shall become a member in this system.

(d) A public safety service employee of a participating employer other than the state who began participation in this system after July 1, 1989, but before July 1, 2011, is only eligible for service credit in this system.

(e) A person initially entering employment with a participating employer on or after July 1, 2011, may not participate in this system.

(3) (a) (i) A participating employer that has public safety service and firefighter service employees that require cross-training and duty shall enroll those dual purpose employees in the system in which the greatest amount of time is actually worked.

(ii) The employees shall either be full-time public safety service or full-time firefighter service employees of the participating employer.

(b) (i) Prior to transferring a dual purpose employee from one system to another, the participating employer shall receive written permission from the office.

(ii) The office may request documentation to verify the appropriateness of the transfer.

(4) The board may combine or segregate the actuarial experience of participating employers in this system for the purpose of setting contribution rates.

(5) (a) (i) Each participating employer participating in this system shall annually submit to the office a schedule indicating the positions to be covered under this system in accordance with this chapter.

(ii) The office may require documentation to justify the inclusion of any position under this system.

(b) If there is a dispute between the office and a participating employer or employee over any position to be covered, the disputed position shall be submitted to the Peace Officer Standards and Training Council established under Section 53-6-106 for determination.

(c) (i) The Peace Officer Standards and Training Council's authority to decide eligibility for public safety service credit is limited to claims for coverage under this system for time periods after July 1, 1989.

(ii) A decision of the Peace Officer Standards and Training Council may not be applied to service credit earned in another system prior to July 1, 1989.

(iii) Except as provided under Subsection (5)(c)(iv), a decision of the Peace Officer Standards and Training Council granting a position coverage under this system may only be applied prospectively from the date of that decision.

(iv) A decision of the Peace Officer Standards and Training Council granting a position coverage under this system may be applied retroactively only if:

(A) the participating employer covered other similarly situated positions under this system during the time period in question; and

(B) the position otherwise meets all eligibility requirements for receiving service credit in this system during the period for which service credit is to be granted.

(6) The Peace Officer Standards and Training Council may use a subcommittee to provide a recommendation to the council in determining disputes between the office and a participating employer or employee over a position to be covered under this system.

(7) The Peace Officer Standards and Training Council shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in resolving coverage disputes in this system.

(8) A public safety service employee who is transferred or promoted to an administration position not covered by this system shall continue to earn public safety service credit in this system as long as the employee remains employed in the same department.

(9) Any employee who is reassigned to the Department of Technology Services or to the Department of Human Resource Management, and who was a member in this system, shall be entitled to remain a member in this system.

(10) (a) To determine that a position is covered under this system, the office and, if a



coverage dispute arises, the Peace Officer Standards and Training Council shall find that the position requires the employee to:

- (i) place the employee's life or personal safety at risk; and
- (ii) complete training as provided in Section 53-13-103, 53-13-104, or 53-13-105.

(b) If a position satisfies the requirements of Subsection (10)(a), the office and Peace Officer Standards and Training Council shall consider whether the position requires the employee to:

- (i) perform duties that consist primarily of actively preventing or detecting crime and enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
- (ii) perform duties that consist primarily of providing community protection; and
- (iii) respond to situations involving threats to public safety and make emergency decisions affecting the lives and health of others.

(11) If a subcommittee is used to recommend the determination of disputes to the Peace Officer Standards and Training Council, the subcommittee shall comply with the requirements of Subsection (10) in making its recommendation.

(12) A final order of the Peace Officer Standards and Training Council regarding a dispute is a final agency action for purposes of Title 63G, Chapter 4, Administrative Procedures Act.

(13) Except as provided under Subsection (14), if a participating employer's public safety service employees are not covered by this system under Chapter 14, Public Safety Contributory Retirement Act, as of January 1, 1998, those public safety service employees who may otherwise qualify for membership in this system shall, at the discretion of the participating employer, remain in their current retirement system.

(14) (a) A public safety service employee employed by an airport police department, which elects to cover its public safety service employees under the Public Safety Noncontributory Retirement System under Subsection (13), may elect to remain in the public safety service employee's current retirement system.

(b) The public safety service employee's election to remain in the current retirement system under Subsection (14)(a):

- (i) shall be made at the time the employer elects to move its public safety service employees to a public safety retirement system;

- (ii) documented by written notice to the participating employer; and  
(iii) is irrevocable.

(15) Notwithstanding any other provision of this section, a person initially entering employment with a participating employer on or after July 1, 2011, may not participate in this system.

Section 15. Section **49-15-202** is amended to read:

**49-15-202. Participation of employers -- Requirements -- Admission -- Full participation in system -- Supplemental programs authorized.**

(1) An employer that employs public safety service employees and is required by Section 49-12-202 or 49-13-202 to be a participating employer in the Public Employees' Contributory Retirement System or the Public Employees' Noncontributory Retirement System shall cover all its public safety service employees under one of the following systems or plans:

- (a) Chapter 12, Public Employees' Contributory Retirement Act;
- (b) Chapter 13, Public Employees' Noncontributory Retirement Act;
- (c) Chapter 14, Public Safety Contributory Retirement Act; ~~[or]~~
- (d) Chapter 15, Public Safety Noncontributory Retirement Act~~[-];~~ or
- (e) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.

(2) An employer that covers its public safety employees under Subsection (1)(d) is a participating employer in this system.

(3) If a participating employer under Subsection (1) covers any of its public safety service employees under the Public Safety Contributory Retirement System or the Public Safety Noncontributory Retirement System, that participating employer shall cover all of its public safety service employees under one of those systems, except for a public safety service employee initially entering employment with a participating employer beginning on or after July 1, 2011.

(4) (a) ~~[An]~~ Until June 30, 2011, an employer that is not participating in this system may by resolution of its governing body apply for coverage of its public safety service employees by this system.

(b) Upon approval of the board, the employer shall become a participating employer in this system subject to this title.

(5) If a participating employer purchases service credit on behalf of employees for

service rendered prior to the participating employer's admission to this system, the service credit must be purchased in a nondiscriminatory manner on behalf of all current and former employees who were eligible for service credit at the time service was rendered.

(6) A participating employer may not withdraw from this system.

(7) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.

Section 16. Section **49-16-201** is amended to read:

**49-16-201. System membership -- Eligibility.**

(1) A firefighter service employee who performs firefighter service for an employer participating in this system is eligible for service credit in this system upon the earliest of:

(a) July 1, 1971, if the firefighter service employee was employed by the participating employer on July 1, 1971, and the participating employer was participating in this system on that date;

(b) the date the participating employer begins participating in this system if the firefighter service employee was employed by the participating employer on that date; or

(c) the date the firefighter service employee is hired to perform firefighter services for a participating employer, if the firefighter initially enters employment before July 1, 2011.

(2) (a) (i) A participating employer that has public safety service and firefighter service employees that require cross-training and duty shall enroll the dual purpose employees in the system in which the greatest amount of time is actually worked.

(ii) The employees shall either be full-time public safety service or full-time firefighter service employees of the participating employer.

(b) (i) Prior to transferring a dual purpose employee from one system to another, the participating employer shall receive written permission from the office.

(ii) The office may request documentation to verify the appropriateness of the transfer.

(3) (a) A person hired by a regularly constituted fire department on or after July 1, 1971, who does not perform firefighter service is not eligible for service credit in this system.

(b) The nonfirefighter service employee shall become a member of the system for which the nonfirefighter service employee qualifies for service credit.

(c) The service credit exclusion under this Subsection (3) may not be interpreted to

1079 prohibit the assignment of a disabled or partially disabled firefighter to a nonfirefighter service  
1080 position.

1081 (d) If Subsection (3)(c) applies, the firefighter service employee remains eligible for  
1082 service credit in this system.

1083 (4) An allowance or other benefit may not be granted under this system that is based  
1084 upon the same service for benefits received under some other system.

1085 (5) Service as a volunteer firefighter is not eligible for service credit in this system.

1086 (6) An employer that maintains a regularly constituted fire department is eligible to  
1087 participate in this system.

1088 (7) Beginning July 1, 2011, a person initially entering employment with a participating  
1089 employer may not participate in this system.

1090 Section 17. Section **49-16-202** is amended to read:

1091 **49-16-202. Participation of employers -- Full participation in system --**  
1092 **Supplemental programs authorized.**

1093 (1) An employer that employs firefighter service employees and is required by Section  
1094 49-12-202 or 49-13-202 to be a participating employer in the Public Employees' Contributory  
1095 Retirement System or the Public Employees' Noncontributory Retirement System shall cover  
1096 all of its firefighter service employees under one of the following systems or plans:

1097 (a) Chapter 12, Public Employees' Contributory Retirement Act;

1098 (b) Chapter 13, Public Employees' Noncontributory Retirement Act; [~~or~~]

1099 (c) Chapter 16, Firefighters' Retirement Act[~~;~~]; or

1100 (d) Chapter 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.

1101 (2) Any employer that covers its firefighter service employees under Subsection (1)(c)  
1102 is a participating employer in this system.

1103 (3) If a participating employer under Subsection (1) covers any of its firefighter service  
1104 employees under the Firefighters' Retirement System, that participating employer shall cover  
1105 all of its firefighter service employees under that system, except for a firefighter service  
1106 employee initially entering employment with a participating employer on or after July 1, 2011.

1107 (4) (a) [~~An~~] Until June 30, 2011, an employer that is not participating in this system  
1108 may, by resolution of its governing body submitted to the board, apply for coverage of its  
1109 firefighter service employees by this system.

(b) Upon approval of the board, the employer shall become a participating employer in this system subject to this title.

(5) A participating employer may not withdraw from this system.

(6) In addition to their participation in the system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their firefighter service employees.

Section 18. Section **49-19-201** is amended to read:

**49-19-201. Plan participation -- Eligibility.**

(1) Governors and legislators who enter office before July 1, 2011, are eligible for service credit in this plan during their term of service in their elected position.

(2) A governor or legislator initially entering office on or after July 1, 2011:

(a) may not participate in this system;

(b) is only eligible to participate in the Tier II Defined Contribution Plan established under Chapter 22, Part 4, Tier II Defined Contribution Plan; and

(c) is not eligible to participate in the Tier II hybrid retirement system established under Chapter 22, Part 3, Tier II Hybrid Retirement System.

Section 19. Section **49-21-201** is amended to read:

**49-21-201. Program membership -- Eligibility.**

(1) The state shall cover all of its eligible employees under this chapter.

(2) Public safety service employees, as defined in Sections 49-14-102 [~~and~~], 49-15-102, and 49-23-102 shall be covered under this chapter or a substantially similar long-term disability program in accordance with the provisions of Section 49-14-601 [~~or~~], 49-15-601[~~;~~], or 49-23-601.

(3) Beginning on July 1, 2011, firefighter service employees, as defined in Section 49-23-102, initially entering employment on or after July 1, 2011, and volunteer firefighters, as defined in Section 49-23-102, shall be covered under this chapter or a substantially similar long-term disability program in accordance with the provisions of Section 49-23-601.

[~~(3)~~] (4) Except as provided under Subsection (5), all other employers may provide coverage for their eligible employees under this chapter.

[~~(4)~~] (5) If an employer elects to cover any of its eligible employees under this chapter, all of its eligible employees shall be covered.

1141           ~~[(5)]~~ (6) Except as provided under Subsections (1) and (2), nothing in this chapter  
1142 requires any employer to cover its eligible employees under this chapter.

1143           ~~[(6)]~~ (7) The following employees are not eligible for coverage under this chapter:

1144           (a) firefighter service employees, as defined under Section 49-16-102, that initially  
1145 entered employment prior to July 1, 2011; and

1146           (b) legislators.

1147           Section 20. Section **49-21-403** is amended to read:

1148           **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

1149           (1) An eligible employee covered by this chapter and eligible for service credit under a  
1150 system, or a participant in the Tier II Defined Contribution Plan, created in Chapter 22, Part 4,  
1151 Tier II Defined Contribution Plan, or Chapter 23, Part 4, Tier II Defined Contribution Plan,  
1152 including an eligible employee who relinquishes rights to retirement benefits under Section  
1153 49-11-619, who applies and is qualified for a monthly disability benefit shall receive a monthly  
1154 disability benefit until the earlier of:

1155           (a) the date the eligible employee is no longer disabled;

1156           (b) the date the eligible employee has accumulated:

1157           (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public  
1158 Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement  
1159 Act;

1160           (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges'  
1161 Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act; ~~[or]~~

1162           (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public  
1163 Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory  
1164 Retirement Act; ~~[or]~~

1165           (iv) 35 years of service credit if the eligible employee is covered by the defined benefit  
1166 portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is covered by the  
1167 defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan; or

1168           (v) 25 years of service credit if the eligible employee is covered by the defined benefit  
1169 portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is covered by the  
1170 defined contribution plan under Chapter 23, Part 4, Tier II Defined Contribution Plan; or

1171           (c) the date the eligible employee has received a monthly disability benefit for the

1172 following applicable time periods:

1173 (i) if the eligible employee is under age 60, the monthly disability benefit is payable  
1174 until age 65;

1175 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the  
1176 monthly disability benefit is payable for five years;

1177 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the  
1178 monthly disability benefit is payable for four years;

1179 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the  
1180 monthly disability benefit is payable for three years;

1181 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the  
1182 monthly disability benefit is payable for two years; and

1183 (vi) if the eligible employee is 69 years of age or older on the date of disability, the  
1184 monthly disability benefit is payable for one year.

1185 (2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible  
1186 for service credit under a system may retire under the requirements of the system which  
1187 covered the eligible employee on the date of disability.

1188 (b) The final average salary used in the calculation of the allowance shall be based on  
1189 the annual rate of pay on the date of disability, improved by the annual cost-of-living increase  
1190 factor applied to retirees of the system which covered the eligible employee on the date of  
1191 disability.

1192 (3) An eligible employee who is eligible for service credit in a system, but has  
1193 relinquished rights to an allowance under Section 49-11-619, may receive the benefits the  
1194 eligible employee would have received by being eligible for service credit in the system  
1195 covering the eligible employee on the date of disability, except for the accrual of service credit,  
1196 in accordance with this title.

1197 (4) An eligible employee receiving a monthly disability benefit who has service credit  
1198 from two or more systems may not combine service credits under Section 49-11-405 in  
1199 qualifying for retirement, unless the eligible employee would receive a greater allowance by  
1200 combining the service credits.

1201 (5) A monthly disability benefit payable to an eligible employee who is not eligible for  
1202 service credit under a system shall terminate at the earliest of:

- 1203 (a) the date the eligible employee would be eligible for an unreduced allowance;  
1204 (b) the date the eligible employee has received a monthly disability benefit for the  
1205 applicable time period as set forth in Subsection (1)(b); or  
1206 (c) the date the eligible employee receives a reduced allowance.

1207 Section 21. Section **49-22-101** is enacted to read:

1208 **CHAPTER 22. NEW PUBLIC EMPLOYEES' TIER II CONTRIBUTORY**

1209 **RETIREMENT ACT**

1210 **Part 1. General Provisions**

1211 **49-22-101. Title.**

1212 This chapter is known as the "New Public Employees' Tier II Contributory Retirement  
1213 Act."

1214 Section 22. Section **49-22-102** is enacted to read:

1215 **49-22-102. Definitions.**

1216 As used in this chapter:

1217 (1) (a) Except as provided in Subsection (1)(c), "compensation" means the total  
1218 amount of payments made by a participating employer to a member of this system for services  
1219 rendered to the participating employer, including:

1220 (i) bonuses;

1221 (ii) cost-of-living adjustments;

1222 (iii) other payments currently includable in gross income and that are subject to Social  
1223 Security deductions, including any payments in excess of the maximum amount subject to  
1224 deduction under Social Security law;

1225 (iv) amounts that the member authorizes to be deducted or reduced for salary deferral  
1226 or other benefits authorized by federal law; and

1227 (v) member contributions.

1228 (b) "Compensation" for purposes of this chapter may not exceed the amount allowed  
1229 under Internal Revenue Code, Section 401(a)(17).

1230 (c) "Compensation" does not include:

1231 (i) the monetary value of remuneration paid in kind, including a residence or use of  
1232 equipment;

1233 (ii) the cost of any employment benefits paid for by the participating employer;



1234 (iii) compensation paid to a temporary employee or an employee otherwise ineligible  
1235 for service credit;

1236 (iv) any payments upon termination, including accumulated vacation, sick leave  
1237 payments, severance payments, compensatory time payments, or any other special payments; or

1238 (v) any allowances or payments to a member for costs or expenses paid by the  
1239 participating employer, including automobile costs, uniform costs, travel costs, tuition costs,  
1240 housing costs, insurance costs, equipment costs, and dependent care costs.

1241 (d) The executive director may determine if a payment not listed under this Subsection  
1242 (1) falls within the definition of compensation.

1243 (2) "Corresponding Tier I system" means the system or plan that would have covered  
1244 the member if the member had initially entered employment before July 1, 2011.

1245 (3) "Final average salary" means the amount computed by averaging the highest five  
1246 years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), and  
1247 (d).

1248 (a) Except as provided in Subsection (3)(b), the percentage increase in annual  
1249 compensation in any one of the years used may not exceed the previous year's compensation by  
1250 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
1251 of the dollar during the previous year, as measured by a United States Bureau of Labor  
1252 Statistics Consumer Price Index average as determined by the board.

1253 (b) In cases where the participating employer provides acceptable documentation to the  
1254 office, the limitation in Subsection (3)(a) may be exceeded if:

1255 (i) the member has transferred from another agency; or

1256 (ii) the member has been promoted to a new position.

1257 (c) If the member retires more than six months from the date of termination of  
1258 employment, the member is considered to have been in service at the member's last rate of pay  
1259 from the date of the termination of employment to the effective date of retirement for purposes  
1260 of computing the member's final average salary only.

1261 (d) If the member has less than five years of service credit in this system, final average  
1262 salary means the average annual compensation paid to the member during the full period of  
1263 service credit.

1264 (4) "Participating employer" means an employer which meets the participation

1265 requirements of:

1266 (a) Sections 49-12-201 and 49-12-202;

1267 (b) Sections 49-13-201 and 49-13-202;

1268 (c) Section 49-19-201; or

1269 (d) Section 49-22-201 or 49-22-202.

1270 (5) (a) "Regular full-time employee" means an employee whose term of employment

1271 for a participating employer contemplates continued employment during a fiscal or calendar

1272 year and whose employment normally requires an average of 20 hours or more per week,

1273 except as modified by the board, and who receives benefits normally provided by the

1274 participating employer.

1275 (b) "Regular full-time employee" includes:

1276 (i) a teacher whose term of employment for a participating employer contemplates

1277 continued employment during a school year and who teaches half-time or more;

1278 (ii) a classified school employee whose employment normally requires an average of

1279 20 hours per week or more for a participating employer, regardless of benefits provided;

1280 (iii) an officer, elective or appointive, who earns during the first full month of the term

1281 of office \$500 or more, indexed as of January 1, 1990, as provided in Section 49-22-309;

1282 (iv) a faculty member or employee of an institution of higher education who is

1283 considered full-time by that institution of higher education; and

1284 (v) an individual who otherwise meets the definition of this Subsection (5) who

1285 performs services for a participating employer through a professional employer organization or

1286 similar arrangement.

1287 (c) "Regular full-time employee" does not include:

1288 (i) a firefighter service employee as defined in Section 49-23-102; or

1289 (ii) a public safety service employee as defined in Section 49-23-102.

1290 (6) "System" means the New Public Employees' Tier II Contributory Retirement

1291 System created under this chapter.

1292 (7) "Years of service credit" means:

1293 (a) a period, consisting of 12 full months as determined by the board;

1294 (b) a period determined by the board, whether consecutive or not, during which a

1295 regular full-time employee performed services for a participating employer, including any time

the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or

(c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Section 23. Section **49-22-103** is enacted to read:

**49-22-103. Creation of system.**

(1) There is created for members employed by a participating employer the "New Public Employees' Tier II Contributory Retirement System."

(2) The New Public Employees' Tier II Contributory Retirement System includes:

(a) the Tier II hybrid retirement system created in Part 3, Tier II Hybrid Retirement System; and

(b) the Tier II defined contribution plan created in Part 4, Tier II Defined Contribution Plan.

Section 24. Section **49-22-104** is enacted to read:

**49-22-104. Creation of trust fund.**

(1) There is created the "New Public Employees' Tier II Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering the defined benefit portion of this system.

(2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Section 25. Section **49-22-201** is enacted to read:

**Part 2. Membership Eligibility**

**49-22-201. System membership -- Eligibility.**

(1) Beginning July 1, 2011, a participating employer shall participate in this system.

(2) (a) A person entering regular full-time employment with a participating employer on or after July 1, 2011, is eligible:

(i) as a member for service credit and defined contributions under the Tier II hybrid

retirement system established by Part 3, Tier II Hybrid Retirement System; or

(ii) as a participant for defined contributions under the Tier II defined contribution plan established by Part 4, Tier II Defined Contribution Plan.

(b) A person entering regular full-time employment with a participating employer on or after July 1, 2011, shall:

(i) make an election to participate in the system created under this chapter within 30 days from the date of employment:

(A) as a member for service credit and defined contributions under the Tier II Hybrid Retirement System established by Part 3, Tier II Hybrid Retirement System; or

(B) as a participant for defined contributions under the Tier II defined contribution plan established by Part 4, Tier II Defined Contribution Plan; and

(ii) submit to the office notification of the member's election under Subsection (2)(b)(i) in a manner approved by the office.

(c) An election made by a person entering regular full-time employment with a participating employer under this Subsection (2) is irrevocable.

(d) If no election is made under Subsection (2)(b)(i), the person shall become a member eligible for service credit and defined contributions under the Tier II Hybrid Retirement System established by Part 3, Tier II Hybrid Retirement System.

(3) Notwithstanding the provisions of this section, a governor or legislator initially entering office on or after July 1, 2011:

(a) is only eligible to participate in the Tier II defined contribution plan established under Chapter 22, Part 4, Tier II Defined Contribution Plan; and

(b) is not eligible to participate in the Tier II hybrid retirement system established under Chapter 22, Part 3, Tier II Hybrid Retirement System.

Section 26. Section **49-22-202** is enacted to read:

**49-22-202. Participation of employers -- Limitations -- Exclusions -- Admission requirements.**

(1) Unless excluded under Subsection (2), an employer is a participating employer and may not withdraw from participation in this system.

(2) An employer that is a charter school sponsored by the State Board of Education or a school district may be excluded from participation in this system if the charter school makes an

1358 election of nonparticipation in accordance with Section 53A-1a-512 unless the charter school  
1359 makes a one-time, irrevocable retraction of the election of nonparticipation in accordance with  
1360 Subsection 53A-1a-512(9).

1361 (3) (a) An employer may, by resolution of its governing body, apply for admission to  
1362 this system.

1363 (b) Upon approval of the resolution by the board, the employer is a participating  
1364 employer in this system and is subject to this title.

1365 (4) If a participating employer purchases service credit on behalf of regular full-time  
1366 employees for service rendered prior to the participating employer's admission to this system,  
1367 the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and  
1368 former regular full-time employees who were eligible for service credit at the time service was  
1369 rendered.

1370 Section 27. Section **49-22-203** is enacted to read:

1371 **49-22-203. Exclusions from membership in system.**

1372 The following employees are not eligible for service credit in this system:

1373 (1) An employee whose employment status is temporary in nature due to the nature or  
1374 the type of work to be performed, provided that:

1375 (a) if the term of employment exceeds six months and the employee otherwise qualifies  
1376 for service credit in this system, the participating employer shall report and certify to the office  
1377 that the employee is a regular full-time employee effective the beginning of the seventh month  
1378 of employment; and

1379 (b) if an employee, previously terminated prior to becoming eligible for service credit  
1380 in this system, is reemployed within three months of termination by the same participating  
1381 employer, the participating employer shall report and certify to the office that the member is a  
1382 regular full-time employee when the total of the periods of employment equals six months and  
1383 the employee otherwise qualifies for service credit in this system.

1384 (2) (a) A current or future employee of an institution of higher education who holds, or  
1385 is entitled to hold, under Section 49-22-204, a retirement annuity contract with the Teachers'  
1386 Insurance and Annuity Association of America or with any other public or private system,  
1387 organization, or company during any period in which required contributions based on  
1388 compensation have been paid on behalf of the employee by the employer.

(b) The employee, upon cessation of the participating employer contributions, shall immediately become eligible for service credit in this system.

(3) An employee serving as an exchange employee from outside the state.

(4) An employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act.

Section 28. Section **49-22-204** is enacted to read:

**49-22-204. Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems.**

(1) (a) Regular full-time employees of institutions of higher education who are eligible to participate in either this system or in a retirement annuity contract with the Teachers' Insurance and Annuity Association of America or with any other public or private system, organization, or company, designated by the Board of Regents, shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1)(a).

(b) The election is final, and no right exists to make any further election.

(2) (a) A regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.

(b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Board of Regents, so that each classification is assigned with either:

(i) this system;

(ii) the Teachers' Insurance and Annuity Association of America; or

(iii) another public or private system, organization, or company designated by the Board of Regents.

(3) A regular full-time employee hired by an institution of higher education on or after July 1, 2011, whose employment classification requires participation in this system may elect to continue participation in this system upon change to an employment classification which requires participation in:

(a) an annuity plan with the Teachers' Insurance and Annuity Association of America;

1420 or

1421 (b) another public or private system, organization, or company designated by the Board  
1422 of Regents.

1423 (4) A regular full-time employee hired by an institution of higher education on or after  
1424 July 1, 2011, whose employment classification requires participation in this system shall  
1425 participate in this system.

1426 Section 29. Section **49-22-301** is enacted to read:

1427 **Part 3. Tier II Hybrid Retirement System**

1428 **49-22-301. Contributions.**

1429 (1) Participating employers and members shall jointly pay the certified contribution  
1430 rates to the office to maintain the defined benefit portion of this system on a financially and  
1431 actuarially sound basis.

1432 (2) (a) A participating employer shall pay up to 10% of compensation toward the  
1433 certified contribution rate to the office for the defined benefit portion of this system.

1434 (b) A member shall pay the amount, if any, of the certified contribution rate for the  
1435 defined benefit portion of this system that exceeds 10% to the office.

1436 (c) In addition to the percent specified under Subsection (2)(a), the participating  
1437 employer shall pay the corresponding Tier I system amortization rate of the employee's  
1438 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1439 (3) A participating employer may not elect to pay all or part of the required member  
1440 contributions under Subsection (2)(b), in addition to the required participating employer  
1441 contributions.

1442 (4) (a) A member contribution is credited by the office to the account of the individual  
1443 member.

1444 (b) This amount, together with refund interest, is held in trust for the payment of  
1445 benefits to the member or the member's beneficiaries.

1446 (c) A member contribution is vested and nonforfeitable.

1447 (5) (a) Each member is considered to consent to payroll deductions of member  
1448 contributions.

1449 (b) The payment of compensation less these payroll deductions is considered full  
1450 payment for services rendered by the member.

(6) Benefits provided under the defined benefit portion of the Tier II Hybrid Retirement System created under this part may not be increased unless the actuarial funded ratios of all systems under this title reach 100%.

Section 30. Section **49-22-302** is enacted to read:

**49-22-302. Purchase of service credit.**

A member who works 20 or more hours per week for a participating employer participating in this system, but who does not meet other eligibility requirements for service credit, may purchase the service credit in accordance with Section 49-11-403.

Section 31. Section **49-22-303** is enacted to read:

**49-22-303. Defined contribution benefit established -- Contribution by employer and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of plans.**

(1) (a) A participating employer shall make a nonelective contribution on behalf of each regular full-time employee who is a member of this system in an amount equal to 10% minus the contribution rate paid by the employer pursuant to Subsection 49-22-301(2)(a) of the member's compensation to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:

(i) is sponsored by the board; and

(ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

(b) The member may make additional payments to:

(i) the qualified 401(k) plan which receives the employer contribution described in this Subsection (1); or

(ii) at the member's option, another defined contribution plan established by the participating employer.

(2) (a) The total amount contributed by the participating employer under Subsection (1)(a) vests to the member's benefit after four years of employment from the date of employment.

(b) The total amount contributed by the member under Subsection (1)(b) vests to the member's benefit immediately and is nonforfeitable.

(3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be invested in a default option selected by the board until the member is vested in accordance with



1482 Subsection (2)(a).

1483 (b) A member may direct the investment of contributions made by a participating  
1484 employer under Subsection (1)(a) only after the contributions have vested in accordance with  
1485 Subsection (2)(a).

1486 (c) A member may direct the investment of contributions made by the member under  
1487 Subsection (1)(b).

1488 (4) No loans shall be available from contributions made by a participating employer  
1489 under Subsection (1)(a).

1490 (5) No hardship distributions shall be available from contributions made by a  
1491 participating employer under Subsection (1)(a).

1492 (6) (a) Except as provided in Subsection (6)(b), if a member terminates employment  
1493 with a participating employer prior to the vesting period described in Subsection (2)(a), all  
1494 contributions made by a participating employer on behalf of the member under Subsection  
1495 (1)(a) are subject to forfeiture.

1496 (b) If a member who terminates employment with a participating employer prior to the  
1497 vesting period described in Subsection (2)(a) subsequently enters employment with the same or  
1498 another participating employer within 10 years of the termination date of the previous  
1499 employment:

1500 (i) all contributions made by the previous participating employer on behalf of the  
1501 member shall be reinstated upon the member's completion of the vesting period under  
1502 Subsection (2)(a); and

1503 (ii) the length of time that the member worked with the previous employer shall be  
1504 included in determining whether the member has completed the vesting period under  
1505 Subsection (2)(a).

1506 (c) The board shall establish a forfeiture account and shall specify the uses of the  
1507 forfeiture account, which may include an offset against employer contributions made under this  
1508 section.

1509 (7) The board may request from any other qualified 401(k) plan under Subsection (1)  
1510 or (2) any relevant information pertaining to the maintenance of its tax qualification under the  
1511 Internal Revenue Code.

1512 (8) The board may take any action which in its judgment is necessary to maintain the

1513 tax-qualified status of its 401(k) defined contribution plan under federal law.

1514 Section 32. Section **49-22-304** is enacted to read:

1515 **49-22-304. Defined benefit eligibility for an allowance -- Date of retirement --**

1516 **Qualifications.**

1517 (1) A member is qualified to receive an allowance from this system when:

1518 (a) before the member's retirement date, the member ceases actual work for a

1519 participating employer in this system and provides evidence of the termination;

1520 (b) the member has submitted to the office a notarized retirement application form that

1521 states the member's proposed retirement date; and

1522 (c) one of the following conditions is met as of the member's retirement date:

1523 (i) the member has accrued at least four years of service credit and has attained an age

1524 of 65 years;

1525 (ii) the member has accrued at least 10 years of service credit and has attained an age

1526 of 62 years;

1527 (iii) the member has accrued at least 20 years of service credit and has attained an age

1528 of 60 years; or

1529 (iv) the member has accrued at least 35 years of service credit.

1530 (2) (a) The member's retirement date:

1531 (i) shall be the 1st or the 16th day of the month, as selected by the member;

1532 (ii) shall be on or after the date of termination; and

1533 (iii) may not be more than 90 days before or after the date the application is received by

1534 the office.

1535 (b) A member may not be employed by a participating employer in the system

1536 established by this chapter on the retirement date selected under Subsection (2)(a)(i).

1537 Section 33. Section **49-22-305** is enacted to read:

1538 **49-22-305. Defined benefit service retirement plans -- Calculation of retirement**

1539 **allowance -- Social Security limitations.**

1540 (1) (a) The retirees of this system may choose from the six retirement options described

1541 in this section.

1542 (b) Options Two, Three, Four, Five, and Six are modifications of the Option One

1543 calculation.

1544           (2) The Option One benefit is an annual allowance calculated as follows:

1545           (a) If the retiree is at least 65 years of age or has accrued at least 35 years of service  
1546 credit, the allowance is an amount equal to 1.5% of the retiree's final average salary multiplied  
1547 by the number of years of service credit accrued on and after July 1, 2011.

1548           (b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full  
1549 actuarial amount for each year of retirement from age 60 to age 65, unless the member has 35  
1550 or more years of accrued credit in which event no reduction is made to the allowance.

1551           (c) (i) Years of service includes any fractions of years of service to which the retiree  
1552 may be entitled.

1553           (ii) At the time of retirement, if a retiree's combined years of actual, not purchased,  
1554 service credit is within 1/10 of one year of the total years of service credit required for  
1555 retirement, the retiree shall be considered to have the total years of service credit required for  
1556 retirement.

1557           (d) An Option One allowance is only payable to the member during the member's  
1558 lifetime.

1559           (3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated  
1560 by reducing an Option One benefit based on actuarial computations to provide the following:

1561           (a) Option Two is a reduced allowance paid to and throughout the lifetime of the  
1562 retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's  
1563 member contributions, the remaining balance of the retiree's member contributions shall be  
1564 paid in accordance with Sections 49-11-609 and 49-11-610.

1565           (b) Option Three is a reduced allowance paid to and throughout the lifetime of the  
1566 retiree, and, upon the death of the retiree, the same reduced allowance is paid to and throughout  
1567 the lifetime of the retiree's lawful spouse at the time of retirement.

1568           (c) Option Four is a reduced allowance paid to and throughout the lifetime of the  
1569 retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance is  
1570 paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

1571           (d) Option Five is a modification of Option Three so that if the lawful spouse at the  
1572 time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the  
1573 time of initial retirement under Option One shall be paid to the retiree for the remainder of the  
1574 retiree's life, beginning on the last day of the month following the month in which the lawful

1575 spouse dies.

1576 (e) Option Six is a modification of Option Four so that if the lawful spouse at the time  
1577 of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time  
1578 of initial retirement under Option One shall be paid to the retiree for the remainder of the  
1579 retiree's life, beginning on the last day of the month following the month in which the lawful  
1580 spouse dies.

1581 (4) Periods of employment which are exempt from this system under Subsection  
1582 49-22-203(1)(b) may be purchased by the member for the purpose of retirement only if all  
1583 benefits from the Teachers' Insurance and Annuity Association of America or any other public  
1584 or private system or organization based on this period of employment are forfeited.

1585 (5) (a) If a retiree under Option One dies within 120 days after the retiree's retirement  
1586 date, the retirement is canceled and the death shall be considered as that of a member before  
1587 retirement.

1588 (b) Any payments made to the retiree shall be deducted from the amounts due to the  
1589 beneficiary.

1590 (6) If a retiree retires under either Option Five or Six and subsequently divorces, the  
1591 retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there  
1592 is no court order filed in the matter.

1593 Section 34. Section **49-22-306** is enacted to read:

1594 **49-22-306. Allowance payable by lump-sum payment.**

1595 (1) If a retiree's allowance, as computed under this chapter, amounts to \$25 or less, the  
1596 allowance may be settled by the office by making a lump-sum payment of an amount  
1597 actuarially equivalent to the allowance.

1598 (2) A payment made under this section constitutes a full and complete settlement of the  
1599 retiree's claim against this system.

1600 Section 35. Section **49-22-307** is enacted to read:

1601 **49-22-307. Lump-sum death benefit for retiree and spouse.**

1602 (1) (a) Upon retirement, a retiree may elect to have the office deduct an actuarially  
1603 determined amount from the retiree's allowance to provide a lump-sum benefit payable to a  
1604 beneficiary upon the death of the retiree.

1605 (b) Upon retirement, a retiree may also elect to have an actuarially determined amount

deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.

(c) The board may make rules for the administration of this lump-sum death benefit.

(2) (a) For a retiree who pays for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is payable after the death of the retiree, the allowance shall be restored to its original amount.

(3) (a) A retiree may elect to cancel the lump-sum death benefit under this section.

(b) The cancellation under this Subsection (3) is irrevocable.

(c) Upon cancellation, the allowance shall be restored to its original amount and benefits under this section may not be paid.

Section 36. Section **49-22-308** is enacted to read:

**49-22-308. Defined benefit annual cost-of-living adjustment.**

(1) The office shall make an annual cost-of-living adjustment to:

(a) an original allowance paid under Section 49-22-305, if the allowance has been paid for at least one year; and

(b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.

(b) Annual increases in the Consumer Price Index in excess of 2.5% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 2.5%.

(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the allowance.

Section 37. Section **49-22-309** is enacted to read:

**49-22-309. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination**

policy.

(1) (a) A member may purchase or a member and a participating employer may jointly purchase a maximum of five years of service credit which cannot otherwise be purchased under this title.

(b) At a minimum, the years of service credit purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.

(c) The member's retirement date shall be immediately after the purchase of years of service credit.

(d) The member shall pay at least 5% of the cost of the purchase.

(e) To qualify for a purchase of service credit under this section, the member shall:

(i) have at least five years of service credit; and

(ii) otherwise meet federal eligibility requirements.

(2) The purchase price for the years of service credit shall be calculated and paid for as provided in Section 49-11-403.

(3) Prior to making any purchase of years of service credit under this section, a participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.

(4) Only members retiring from this system may purchase service credit under this section.

Section 38. Section **49-22-401** is enacted to read:

#### **Part 4. Tier II Defined Contribution Plan**

##### **49-22-401. Contributions -- Rates.**

(1) Up to the amount allowed by federal law, the participating employer shall contribute 10% of the participant's compensation to a defined contribution plan.

(2) (a) The participating employer shall contribute the 10% nonelective contribution described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:

(i) is sponsored by the board; and

(ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

(b) The member may make additional payments to:

(i) the qualified 401(k) plan which receives the employer contribution described in this Subsection (2); or

(ii) at the member's option, another defined contribution plan established by the participating employer.

(c) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.

(3) (a) The total amount contributed by the participating employer under Subsection (2)(a) vests to the member's benefit after four years of employment from the date of employment.

(b) The total amount contributed by the member under Subsection (2)(b) vests to the member's benefit immediately and is nonforfeitable.

(4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (3)(a).

(b) A member may direct the investment of contributions made by a participating employer under Subsection (2)(a) only after the contributions have vested in accordance with Subsection (3)(a).

(c) A member may direct the investment of contributions made by the member under Subsection (3)(b).

(5) No loans shall be available from contributions made by a participating employer under Subsection (2)(a).

(6) No hardship distributions shall be available from contributions made by a participating employer under Subsection (2)(a).

(7) (a) Except as provided in Subsection (7)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a), all contributions made by a participating employer on behalf of the member under Subsection (2)(a) are subject to forfeiture.

(b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous

employment:

(i) all contributions made by the previous participating employer on behalf of the member shall be reinstated upon the member's completion of the vesting period under Subsection (3)(a); and

(ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (3)(a).

(c) The board shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against employer contributions made under this section.

(8) The board may request from any other qualified 401(k) plan under Subsection (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.

(9) The board may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Section 39. Section **49-22-402** is enacted to read:

**49-22-402. Defined contribution distributions for disabled members.**

For a person who is disabled and receives contributions under Subsection 49-11-404(4)(b), the disabled member may begin receiving distributions from the defined contributions made by the participating employer on behalf of the disabled member when the person would have been eligible to retire if the person was covered by the defined benefit portion of the Tier II Hybrid Retirement System under Part 3, Tier II Hybrid Retirement System.

Section 40. Section **49-22-501** is enacted to read:

**Part 5. Death Benefit**

**49-22-501. Death benefit by means of group insurance policy -- Eligibility for death benefit -- Benefit calculation -- Payment of claim.**

(1) The office shall provide a death benefit through the purchase of a group insurance policy for members of this system.

(2) The board shall make rules to administer the death benefit provided by this section and may, in accordance with federal law, establish:



- 1730           (a) benefit levels;  
1731           (b) classes of members; and  
1732           (c) a living benefit option.  
1733           (3) This death benefit is payable when:  
1734           (a) the member dies prior to the member's retirement date or dies under circumstances  
1735 which Subsection 49-22-305(5) requires to be treated as the death of a member before  
1736 retirement;  
1737           (b) the office receives acceptable proof of death; and  
1738           (c) benefits are not payable under Section 49-22-307.  
1739           (4) The death benefit payable to the beneficiary under this section is a lump-sum  
1740 payment consisting of:  
1741           (a) the return of any member contributions under this chapter; plus  
1742           (b) a percentage of the final average salary of the member to be determined by the  
1743 board.  
1744           (5) Any amount of a living benefit option paid to the member prior to death shall be  
1745 deducted from the benefit payable to the beneficiary.  
1746           (6) The cost of the death benefit shall be paid by the participating employer in addition  
1747 to the contribution rate established under Section 49-22-301 or 49-22-401.  
1748           (7) The portion of the death benefit provided under Subsection (4)(b) may not be paid  
1749 to the beneficiary of an inactive member unless the death of the member occurs either:  
1750           (a) within a period of 120 days after the last day of work for which the person received  
1751 compensation; or  
1752           (b) while the member is still physically or mentally incapacitated from performance of  
1753 duties, if the incapacity has been continuous since the last day of work for which compensation  
1754 was received.  
1755           (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance  
1756 with Sections 49-11-609 and 49-11-610.  
1757           (9) The death benefit paid to the beneficiary of an inactive member, except as  
1758 otherwise provided under Subsection (7), is a lump-sum return of the member's member  
1759 contributions.  
1760           (10) Payment of the death benefit by the office constitutes a full settlement of any

beneficiary's claim against the office and the office is not liable for any further or additional claims or assessments on behalf of the member.

(11) Unless otherwise specified in a written document filed with the office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills.

(12) A death benefit under this section may not be paid on behalf of a retiree under this system.

Section 41. Section **49-22-502** is enacted to read:

**49-22-502. Death of married members -- Service retirement benefits to surviving spouse.**

(1) As used in this section, "member's full allowance" means an Option Three allowance calculated under Section 49-22-305 without an actuarial reduction.

(2) Upon the request of a deceased member's lawful spouse at the time of the member's death, the deceased member is considered to have retired under Option Three on the first day of the month following the month in which the member died if the following requirements are met:

(a) the member has:

(i) 15 or more years of service credit;

(ii) attained age 62 with 10 or more years of service credit; or

(iii) attained age 65 with four or more years of service credit; and

(b) the member dies leaving a spouse to whom the member has been married at least six months immediately prior to the death date.

(3) The spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:

(a) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or

(b) in which the application is received by the office.

(4) The allowance payable to a surviving spouse under Subsection (2) is as follows:

(a) if the member has 25 or more years of service credit at the time of death, the surviving spouse shall receive the member's full allowance;

(b) if the member has between 20-24 years of service credit and is not age 60 or older

at the time of death, the surviving spouse shall receive 2/3 of the member's full allowance;

(c) if the member has between 15-19 years of service credit and is not age 62 or older at the time of death, the surviving spouse shall receive 1/3 of the member's full allowance; or

(d) if the member is age 60 or older with 20 or more years of service credit, age 62 or older with 10 or more years of service credit, or age 65 or older with four or more years of service credit at the time of death, the surviving spouse shall receive an Option Three benefit with actuarial reductions.

(5) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any other payments made under Section 49-22-501 and shall constitute a full and final settlement of the claim of the spouse or any other beneficiary filing a claim for benefits under Section 49-22-501.

Section 42. Section 49-22-601 is enacted to read:

#### **Part 6. Disability**

##### **49-22-601. Long-term disability coverage.**

In accordance with Section 49-21-201, the state shall cover all of its eligible employees under Chapter 21, Public Employees' Long-Term Disability Act.

Section 43. Section 49-23-101 is enacted to read:

### **CHAPTER 23. NEW PUBLIC SAFETY AND FIREFIGHTER TIER II**

#### **CONTRIBUTORY RETIREMENT ACT**

##### **Part 1. General Provisions**

##### **49-23-101. Title.**

This chapter is known as the "New Public Safety and Firefighter Tier II Contributory Retirement Act."

Section 44. Section 49-23-102 is enacted to read:

##### **49-23-102. Definitions.**

As used in this chapter:

(1) (a) "Compensation" means the total amount of payments that are includable in gross income received by a public safety service employee or a firefighter service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of any amounts the public safety service employee or firefighter service employee

1823 authorizes to be deducted for salary deferral or other benefits authorized by federal law.

1824 (b) "Compensation" includes performance-based bonuses and cost-of-living  
1825 adjustments.

1826 (c) "Compensation" does not include:

1827 (i) overtime;

1828 (ii) sick pay incentives;

1829 (iii) retirement pay incentives;

1830 (iv) the monetary value of remuneration paid in kind, as in a residence, use of  
1831 equipment or uniform, travel, or similar payments;

1832 (v) a lump-sum payment or special payment covering accumulated leave; and

1833 (vi) all contributions made by a participating employer under this system or under any  
1834 other employee benefit system or plan maintained by a participating employer for the benefit of  
1835 a member or participant.

1836 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed  
1837 under Internal Revenue Code Section 401(a)(17).

1838 (2) "Corresponding Tier I system" means the system or plan that would have covered  
1839 the member if the member had initially entered employment before July 1, 2011.

1840 (3) "Final average salary" means the amount computed by averaging the highest five  
1841 years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), and  
1842 (d).

1843 (a) Except as provided in Subsection (3)(b), the percentage increase in annual  
1844 compensation in any one of the years used may not exceed the previous year's compensation by  
1845 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
1846 of the dollar during the previous year, as measured by a United States Bureau of Labor  
1847 Statistics Consumer Price Index average as determined by the board.

1848 (b) In cases where the participating employer provides acceptable documentation to the  
1849 office, the limitation in Subsection (3)(a) may be exceeded if:

1850 (i) the member has transferred from another agency; or

1851 (ii) the member has been promoted to a new position.

1852 (c) If the member retires more than six months from the date of termination of  
1853 employment, the member is considered to have been in service at the member's last rate of pay

from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.

(d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.

(4) "Firefighter service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department, but does not include secretarial staff or other similar employees.

(5) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter. An employee of a regularly constituted fire department who does not perform firefighter service is not a firefighter service employee.

(6) "Participating employer" means an employer which meets the participation requirements of:

(a) Sections 49-14-201 and 49-14-202;

(b) Sections 49-15-201 and 49-15-202;

(c) Sections 49-16-201 and 49-16-202; or

(d) Sections 49-23-201 and 49-23-202.

(7) (a) "Public safety service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is a:

(i) law enforcement officer in accordance with Section 53-13-103;

(ii) correctional officer in accordance with Section 53-13-104; and

(iii) special function officer approved in accordance with Sections 49-15-201 and 53-13-105.

(b) "Public safety service" also requires that in the course of employment the employee's life or personal safety is at risk.

(8) "Public safety service employee" means an employee of a participating employer who performs public safety service under this chapter.

(9) "System" means the New Public Safety and Firefighter Tier II Contributory Retirement System created under this chapter.

(10) (a) "Volunteer firefighter" means any individual that is not regularly employed as a firefighter service employee, but who:

(i) has been trained in firefighter techniques and skills;

(ii) continues to receive regular firefighter training; and

(iii) is on the rolls of a legally organized volunteer fire department which provides ongoing training and serves a political subdivision of the state.

(b) An individual that volunteers assistance but does not meet the requirements of Subsection (10)(a) is not a volunteer firefighter for purposes of this chapter.

(11) "Years of service credit" means:

(a) a period, consisting of 12 full months as determined by the board; or

(b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter.

Section 45. Section **49-23-103** is enacted to read:

**49-23-103. Creation of system.**

(1) There is created for members employed by a participating employer the "New Public Safety and Firefighter Tier II Contributory Retirement System."

(2) The New Public Safety and Firefighter Tier II Contributory Retirement System includes:

(a) the Tier II hybrid retirement system created in Part 3, Tier II Hybrid Retirement System; and

(b) the Tier II defined contribution plan created in Part 4, Tier II Defined Contribution Plan.

Section 46. Section **49-23-104** is enacted to read:

**49-23-104. Creation of trust fund.**

(1) There is created the "New Public Safety and Firefighter Tier II Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering the defined benefit portion of this system.

(2) The fund shall consist of all money paid into it, including interest, in accordance

with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.

(3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Section 47. Section 49-23-201 is enacted to read:

**Part 2. Membership Eligibility**

**49-23-201. System membership -- Eligibility.**

(1) Beginning July 1, 2011, a participating employer that employs public safety service employees or firefighter service employees shall participate in this system.

(2) (a) A public safety service employee or a firefighter service employee entering employment with a participating employer on or after July 1, 2011, is eligible:

(i) as a member for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System; or

(ii) as a participant for defined contributions under the Tier II defined contributions plan established by Part 4, Tier II Defined Contribution Plan.

(b) A public safety service employee or a firefighter service employee entering employment with a participating employer on or after July 1, 2011, shall:

(i) make an election to participate in the system created under this chapter within 30 days from the date of employment:

(A) as a member for service credit and defined contributions under the Tier II Hybrid Retirement System established by Part 3, Tier II Hybrid Retirement System; or

(B) as a participant for defined contributions under the Tier II defined contribution plan established by Part 4, Tier II Defined Contribution Plan; and

(ii) submit to the office notification of the member's election under Subsection (2)(b)(i) in a manner approved by the office.

(c) An election made by a public safety service employee or firefighter service employee entering employment with a participating employer under this Subsection (2) is irrevocable.

(d) If no election is made under Subsection (2)(b)(i), the public safety service employee or firefighter service employee shall become a member eligible for service credit and defined contributions under the Tier II Hybrid Retirement System established by Part 3, Tier II Hybrid

1947 Retirement System.

1948 Section 48. Section **49-23-202** is enacted to read:

1949 **49-23-202. Participation of employers -- Admission requirements.**

1950 (1) An employer is a participating employer and may not withdraw from participation  
1951 in this system.

1952 (2) (a) An employer may, by resolution of its governing body, apply for admission to  
1953 this system.

1954 (b) Upon approval of the resolution by the board, the employer is a participating  
1955 employer in this system and is subject to this title.

1956 (3) If a participating employer purchases service credit on behalf of public safety  
1957 service employees or firefighter service employees for service rendered prior to the  
1958 participating employer's admission to this system, the service credit shall be purchased in a  
1959 nondiscriminatory manner on behalf of all current and former public safety service employees  
1960 or firefighter service employees who were eligible for service credit at the time service was  
1961 rendered.

1962 Section 49. Section **49-23-301** is enacted to read:

1963 **Part 3. Tier II Hybrid Retirement System**

1964 **49-23-301. Contributions.**

1965 (1) Participating employers and members shall jointly pay the certified contribution  
1966 rates to the office to maintain the defined benefit portion of this system on a financially and  
1967 actuarially sound basis.

1968 (2) (a) A participating employer shall pay up to 12% of compensation toward the  
1969 certified contribution rate to the office for the defined benefit portion of this system.

1970 (b) A member shall pay the amount, if any, of the certified contribution rate for the  
1971 defined benefit portion of this system that exceeds 12% to the office.

1972 (c) In addition to the percent specified under Subsection (2)(a), the participating  
1973 employer shall pay the corresponding Tier I system amortization rate of the employee's  
1974 compensation to the office to be applied to the employer's corresponding Tier I system liability.

1975 (3) A participating employer may not elect to pay all or part of the required member  
1976 contributions under Subsection (2)(b), in addition to the required participating employer  
1977 contributions.



1978           (4) (a) A member contribution is credited by the office to the account of the individual  
1979 member.

1980           (b) This amount, together with refund interest, is held in trust for the payment of  
1981 benefits to the member or the member's beneficiaries.

1982           (c) A member contribution is vested and nonforfeitable.

1983           (5) (a) Each member is considered to consent to payroll deductions of member  
1984 contributions.

1985           (b) The payment of compensation less these payroll deductions is considered full  
1986 payment for services rendered by the member.

1987           (6) Benefits provided under the defined benefit portion of the Tier II Hybrid  
1988 Retirement System created under this part may not be increased unless the actuarial funded  
1989 ratios of all systems under this title reach 100%.

1990           Section 50. Section **49-23-302** is enacted to read:

1991           **49-23-302. Defined contribution benefit established -- Contribution by employer**  
1992 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**  
1993 **plans.**

1994           (1) (a) A participating employer shall make a nonelective contribution on behalf of  
1995 each public safety service employee or firefighter service employee who is a member of this  
1996 system in an amount equal to 12% minus the contribution rate paid by the employer pursuant to  
1997 Subsection 49-23-301(2)(a) of the member's compensation to a defined contribution plan  
1998 qualified under Section 401(k) of the Internal Revenue Code which:

1999           (i) is sponsored by the board; and

2000           (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

2001           (b) The member may make additional payments to:

2002           (i) the qualified 401(k) plan which receives the employer contribution described in this  
2003 Subsection (1); or

2004           (ii) at the member's option, another defined contribution plan established by the  
2005 participating employer.

2006           (2) (a) The total amount contributed by the participating employer under Subsection  
2007 (1)(a) vests to the member's benefit after four years of employment from the date of  
2008 employment.

(b) The total amount contributed by the member under Subsection (1)(b) vests to the member's benefit immediately and is nonforfeitable.

(3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (2)(a).

(b) A member may direct the investment of contributions made by a participating employer under Subsection (1)(a) only after the contributions have vested in accordance with Subsection (2)(a).

(c) A member may direct the investment of contributions made by the member under Subsection (1)(b).

(4) No loans shall be available from contributions made by a participating employer under Subsection (1)(a).

(5) No hardship distributions shall be available from contributions made by a participating employer under Subsection (1)(a).

(6) (a) Except as provided in Subsection (6)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a), all contributions made by a participating employer on behalf of the member under Subsection (1)(a) are subject to forfeiture.

(b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (2)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous employment:

(i) all contributions made by the previous participating employer on behalf of the member shall be reinstated upon the member's completion of the vesting period under Subsection (2)(a); and

(ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (2)(a).

(c) The board shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against employer contributions made under this section.

(7) The board may request from any other qualified 401(k) plan under Subsection (1) or (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.

(8) The board may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Section 51. Section **49-23-303** is enacted to read:

**49-23-303. Defined benefit eligibility for an allowance -- Date of retirement --**

**Qualifications.**

(1) A member is qualified to receive an allowance from this system when:

(a) before the member's retirement date, the member ceases actual work for a participating employer in this system and provides evidence of the termination;

(b) the member has submitted to the office a notarized retirement application form that states the member's proposed retirement date; and

(c) one of the following conditions is met as of the member's retirement date:

(i) the member has accrued at least four years of service credit and has attained an age of 65 years;

(ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;

(iii) the member has accrued at least 20 years of service credit and has attained an age of 60 years; or

(iv) the member has accrued at least 25 years of service credit.

(2) (a) The member's retirement date:

(i) shall be the 1st or the 16th day of the month, as selected by the member;

(ii) shall be on or after the date of termination; and

(iii) may not be more than 90 days before or after the date the application is received by the office.

(b) A member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).

Section 52. Section **49-23-304** is enacted to read:

**49-23-304. Defined benefit service retirement plans -- Calculation of retirement allowance -- Social Security limitations.**

(1) (a) The retirees of this system may choose from the six retirement options described in this section.

(b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.

(2) The Option One benefit is an annual allowance calculated as follows:

(a) If the retiree is at least 65 years of age or has accrued at least 25 years of service credit, the allowance is an amount equal to 1.5% of the retiree's final average salary multiplied by the number of years of service credit accrued on and after July 1, 2011.

(b) If the retiree is less than 65 years of age, the allowance shall be reduced by the full actuarial amount for each year of retirement from age 60 to age 65, unless the member has 25 or more years of accrued credit in which event no reduction is made to the allowance.

(c) (i) Years of service includes any fractions of years of service to which the retiree may be entitled.

(ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.

(d) An Option One allowance is only payable to the member during the member's lifetime.

(3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:

(a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance is paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.

(d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the last day of the month following the month in which the lawful spouse dies.

(e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the last day of the month following the month in which the lawful spouse dies.

(4) Periods of employment which are exempt from this system may be purchased by the member for the purpose of retirement only if all benefits from any other public or private system or organization based on this period of employment are forfeited.

(5) (a) If a retiree under Option One dies within 120 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.

(b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.

(6) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to an Option One benefit at the time of divorce, if there is no court order filed in the matter.

Section 53. Section **49-23-305** is enacted to read:

**49-23-305. Allowance payable by lump-sum payment.**

(1) If a retiree's allowance, as computed under this chapter, amounts to \$25 or less, the allowance may be settled by the office by making a lump-sum payment of an amount actuarially equivalent to the allowance.

(2) A payment made under this section constitutes a full and complete settlement of the retiree's claim against this system.

Section 54. Section **49-23-306** is enacted to read:

**49-23-306. Lump-sum death benefit for retiree and spouse.**

(1) (a) Upon retirement, a retiree may elect to have the office deduct an actuarially

determined amount from the retiree's allowance to provide a lump-sum benefit payable to a beneficiary upon the death of the retiree.

(b) Upon retirement, a retiree may also elect to have an actuarially determined amount deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.

(c) The board may make rules for the administration of this lump-sum death benefit.

(2) (a) For a retiree who pays for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.

(b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is payable after the death of the retiree, the allowance shall be restored to its original amount.

(3) (a) A retiree may elect to cancel the lump-sum death benefit under this section.

(b) The cancellation under this Subsection (3) is irrevocable.

(c) Upon cancellation, the allowance shall be restored to its original amount and benefits under this section may not be paid.

Section 55. Section 49-23-307 is enacted to read:

**49-23-307. Defined benefit annual cost-of-living adjustment.**

(1) The office shall make an annual cost-of-living adjustment to:

(a) an original allowance paid under Section 49-23-305, if the allowance has been paid for at least one year; and

(b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.

(2) (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 2.5%.

(b) Annual increases in the Consumer Price Index in excess of 2.5% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 2.5%.

(3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(4) The cost-of-living adjustment made under this section may not decrease the

2164 allowance.

2165 Section 56. Section **49-23-308** is enacted to read:

2166 **49-23-308. Purchase of service credit -- Conditions -- Cost -- Nondiscrimination**  
2167 **policy.**

2168 (1) (a) A member may purchase or a member and a participating employer may jointly  
2169 purchase a maximum of five years of service credit which cannot otherwise be purchased under  
2170 this title.

2171 (b) At a minimum, the years of service credit purchased shall be sufficient to allow the  
2172 member to meet the retirement eligibility requirements of this system with no actuarial  
2173 reduction.

2174 (c) The member's retirement date shall be immediately after the purchase of years of  
2175 service credit.

2176 (d) The member shall pay at least 5% of the cost of the purchase.

2177 (e) To qualify for a purchase of service credit under this section, the member shall:

2178 (i) have at least five years of service credit; and

2179 (ii) otherwise meet federal eligibility requirements.

2180 (2) The purchase price for the years of service credit shall be calculated and paid for as  
2181 provided in Section 49-11-403.

2182 (3) Prior to making any purchase of years of service credit under this section, a  
2183 participating employer shall adopt a purchase policy that includes nondiscriminatory  
2184 participation standards for all regular full-time employees.

2185 (4) Only members retiring from this system may purchase service credit under this  
2186 section.

2187 Section 57. Section **49-23-401** is enacted to read:

2188 **Part 4. Tier II Defined Contribution Plan**

2189 **49-23-401. Contributions -- Rates.**

2190 (1) Up to the amount allowed by federal law, the participating employer shall  
2191 contribute 12% of the participant's compensation to a defined contribution plan.

2192 (2) (a) The participating employer shall contribute the 12% nonelective contribution  
2193 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the  
2194 Internal Revenue Code which:

2195 (i) is sponsored by the board; and  
2196 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.  
2197 (b) The member may make additional payments to:  
2198 (i) the qualified 401(k) plan which receives the employer contribution described in this  
2199 Subsection (2); or  
2200 (ii) at the member's option, another defined contribution plan established by the  
2201 participating employer.  
2202 (c) In addition to the percent specified under Subsection (2)(a), the participating  
2203 employer shall pay the corresponding Tier I system amortization rate of the employee's  
2204 compensation to the office to be applied to the employer's corresponding Tier I system liability.  
2205 (3) (a) The total amount contributed by the participating employer under Subsection  
2206 (2)(a) vests to the member's benefit after four years of employment from the date of  
2207 employment.  
2208 (b) The total amount contributed by the member under Subsection (2)(b) vests to the  
2209 member's benefit immediately and is nonforfeitable.  
2210 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be  
2211 invested in a default option selected by the board until the member is vested in accordance with  
2212 Subsection (3)(a).  
2213 (b) A member may direct the investment of contributions made by a participating  
2214 employer under Subsection (2)(a) only after the contributions have vested in accordance with  
2215 Subsection (3)(a).  
2216 (c) A member may direct the investment of contributions made by the member under  
2217 Subsection (3)(b).  
2218 (5) No loans shall be available from contributions made by a participating employer  
2219 under Subsection (2)(a).  
2220 (6) No hardship distributions shall be available from contributions made by a  
2221 participating employer under Subsection (2)(a).  
2222 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment  
2223 with a participating employer prior to the vesting period described in Subsection (3)(a), all  
2224 contributions made by a participating employer on behalf of the member under Subsection  
2225 (2)(a) are subject to forfeiture.



(b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous employment:

(i) all contributions made by the previous participating employer on behalf of the member shall be reinstated upon the member's completion of the vesting period under Subsection (3)(a); and

(ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (3)(a).

(c) The board shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against employer contributions made under this section.

(8) The board may request from any other qualified 401(k) plan under Subsection (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.

(9) The board may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.

Section 58. Section **49-23-402** is enacted to read:

**49-23-402. Defined contribution distributions for disabled members.**

For a person who is disabled and receives contributions under Subsection 49-11-404(4)(b), the disabled member may begin receiving distributions from the defined contributions made by the participating employer on behalf of the disabled member when the person would have been eligible to retire if the person was covered by the defined benefit portion of the Tier II Hybrid Retirement System under Part 3, Tier II Hybrid Retirement System.

Section 59. Section **49-23-501** is enacted to read:

**Part 5. Death Benefit**

**49-23-501. Death benefit by means of group insurance policy -- Eligibility for death benefit -- Benefit calculation -- Payment of claim.**

(1) The office shall provide a death benefit through the purchase of a group insurance

2257 policy for members of this system.

2258 (2) The board shall make rules to administer the death benefit provided by this section  
2259 and may, in accordance with federal law, establish:

2260 (a) benefit levels;

2261 (b) classes of members; and

2262 (c) a living benefit option.

2263 (3) This death benefit is payable when:

2264 (a) the member dies prior to the member's retirement date or dies under circumstances  
2265 which Subsection 49-23-304(5) requires to be treated as the death of a member before  
2266 retirement;

2267 (b) the office receives acceptable proof of death; and

2268 (c) benefits are not payable under Section 49-23-306.

2269 (4) The death benefit payable to the beneficiary under this section is a lump-sum  
2270 payment consisting of:

2271 (a) the return of any member contributions under this chapter; plus

2272 (b) a percentage of the final average salary of the member to be determined by the  
2273 board.

2274 (5) Any amount of a living benefit option paid to the member prior to death shall be  
2275 deducted from the benefit payable to the beneficiary.

2276 (6) The cost of the death benefit shall be paid by the participating employer in addition  
2277 to the contribution rate established under Section 49-23-301 or 49-23-401.

2278 (7) The portion of the death benefit provided under Subsection (4)(b) may not be paid  
2279 to the beneficiary of an inactive member unless the death of the member occurs either:

2280 (a) within a period of 120 days after the last day of work for which the person received  
2281 compensation; or

2282 (b) while the member is still physically or mentally incapacitated from performance of  
2283 duties, if the incapacity has been continuous since the last day of work for which compensation  
2284 was received.

2285 (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance  
2286 with Sections 49-11-609 and 49-11-610.

2287 (9) The death benefit paid to the beneficiary of an inactive member, except as

2288 otherwise provided under Subsection (7), is a lump-sum return of the member's member  
2289 contributions.

2290 (10) Payment of the death benefit by the office constitutes a full settlement of any  
2291 beneficiary's claim against the office and the office is not liable for any further or additional  
2292 claims or assessments on behalf of the member.

2293 (11) Unless otherwise specified in a written document filed with the office, death  
2294 benefits payable to beneficiaries shall be in accordance with the order of precedence  
2295 established under Title 75, Chapter 2, Intestate Succession and Wills.

2296 (12) A death benefit under this section may not be paid on behalf of a retiree under this  
2297 system.

2298 Section 60. Section **49-23-502** is enacted to read:

2299 **49-23-502. Death of married members -- Service retirement benefits to surviving**  
2300 **spouse.**

2301 (1) As used in this section, "member's full allowance" means an Option Three  
2302 allowance calculated under Section 49-23-304 without an actuarial reduction.

2303 (2) Upon the request of a deceased member's lawful spouse at the time of the member's  
2304 death, the deceased member is considered to have retired under Option Three on the first day of  
2305 the month following the month in which the member died if the following requirements are  
2306 met:

2307 (a) the member has:

2308 (i) 15 or more years of service credit;

2309 (ii) attained age 62 with 10 or more years of service credit; or

2310 (iii) attained age 65 with four or more years of service credit; and

2311 (b) the member dies leaving a spouse to whom the member has been married at least  
2312 six months immediately prior to the death date.

2313 (3) The spouse who requests a benefit under this section shall apply in writing to the  
2314 office. The allowance shall begin on the first day of the month:

2315 (a) following the month in which the member died, if the application is received by the  
2316 office within 90 days of the member's death; or

2317 (b) in which the application is received by the office.

2318 (4) The allowance payable to a surviving spouse under Subsection (2) is:

(a) if the member has 25 or more years of service credit at the time of death, the surviving spouse shall receive the member's full allowance;

(b) if the member has between 20-24 years of service credit and is not age 60 or older at the time of death, the surviving spouse shall receive 2/3 of the member's full allowance;

(c) if the member has between 15-19 years of service credit and is not age 62 or older at the time of death, the surviving spouse shall receive 1/3 of the member's full allowance; or

(d) if the member is age 60 or older with 20 or more years of service credit, age 62 or older with 10 or more years of service credit, or age 65 or older with four or more years of service credit at the time of death, the surviving spouse shall receive an Option Three benefit with actuarial reductions.

(5) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any other payments made under Section 49-23-501 and shall constitute a full and final settlement of the claim of the spouse or any other beneficiary filing a claim for benefits under Section 49-23-501.

Section 61. Section **49-23-503** is enacted to read:

**49-23-503. Death of active member in line-of-duty -- Payment of benefits.**

If an active member of this system dies, benefits are payable as follows:

(1) If the death is classified by the office as a line-of-duty death, benefits are payable as follows:

(a) If the member has accrued less than 20 years of public safety service or firefighter service credit, the spouse at the time of death shall receive a lump sum of \$1,000 and an allowance equal to 30% of the member's final average monthly salary.

(b) If the member has accrued 20 or more years of public safety service or firefighter service credit, the member shall be considered to have retired with an Option One allowance calculated without an actuarial reduction under Section 49-23-304 and the spouse at the time of death shall receive the allowance that would have been payable to the member.

(2) (a) A volunteer firefighter is eligible for a line-of-duty death benefit under this section if the death results from external force, violence, or disease directly resulting from firefighter service.

(b) The lowest monthly compensation of firefighters of a city of the first class in this state at the time of death shall be considered to be the final average monthly salary of a

2350 volunteer firefighter for purposes of computing these benefits.

2351 (c) Each volunteer fire department shall maintain a current roll of all volunteer  
2352 firefighters which meet the requirements of Subsection 49-23-102(10) to determine the  
2353 eligibility for this benefit.

2354 (3) (a) If the death is classified as a line-of-duty death by the office, death benefits are  
2355 payable under this section and the spouse at the time of death is not eligible for benefits under  
2356 Section 49-23-502.

2357 (b) If the death is not classified as a line-of-duty death by the office, benefits are  
2358 payable in accordance with Section 49-23-502.

2359 Section 62. Section **49-23-601** is enacted to read:

2360 **Part 6. Disability Benefit**

2361 **49-23-601. Long-term disability coverage.**

2362 Each participating employer shall cover the following employees under Title 49,  
2363 Chapter 21, Public Employees' Long-Term Disability Act, or a substantially similar long-term  
2364 disability program:

2365 (1) public safety employees initially entering employment on or after July 1, 2011;

2366 (2) firefighter service employees initially entering employment on or after July 1, 2011;

2367 and

2368 (3) volunteer firefighters

2369 Section 63. Section **53-7-105** is amended to read:

2370 **53-7-105. State fire marshal, deputies, and investigators -- Status of law**  
2371 **enforcement officers -- Inclusion in Public Safety Retirement -- Training.**

2372 (1) The state fire marshal, his deputies, and investigators, for the purpose of enforcing  
2373 and investigating violations of fire related statutes and ordinances, have the status of law  
2374 enforcement officers.

2375 (2) Inclusion under Title 49, Chapter 14, Public Safety Contributory Retirement Act,  
2376 [~~or~~] Title 49, Chapter 15, Public Safety Noncontributory Retirement Act, or Title 49, Chapter  
2377 23, New Public Safety and Firefighter Tier II Contributory Retirement Act, is not authorized by  
2378 Subsection (1) except as provided in those chapters.

2379 (3) The commissioner, with the concurrence of the Peace Officer Standards and  
2380 Training Advisory Board may require peace officer standards and training for the state fire

2381 marshal, his deputies, and investigators.

2382 Section 64. Section **53-13-108** is amended to read:

2383 **53-13-108. Retirement.**

2384 Eligibility for coverage under the Public Safety Contributory Retirement System or  
2385 Public Safety Noncontributory Retirement System for persons and political subdivisions  
2386 included in this chapter is governed by Title 49, Chapter 14, Public Safety Contributory  
2387 Retirement Act, ~~and~~ Chapter 15, Public Safety Noncontributory Retirement Act, and Chapter  
2388 23, New Public Safety and Firefighter Tier II Contributory Retirement Act.

2389 Section 65. Section **53A-1a-512** is amended to read:

2390 **53A-1a-512. Employees of charter schools.**

2391 (1) A charter school shall select its own employees.

2392 (2) The school's governing body shall determine the level of compensation and all  
2393 terms and conditions of employment, except as otherwise provided in Subsections (7) and (8)  
2394 and under this part.

2395 (3) The following statutes governing public employees and officers do not apply to  
2396 charter schools:

2397 (a) Chapter 8, Utah Orderly School Termination Procedures Act;

2398 (b) Chapter 10, Educator Evaluation; and

2399 (c) Title 52, Chapter 3, Prohibiting Employment of Relatives.

2400 (4) (a) To accommodate differentiated staffing and better meet student needs, a charter  
2401 school, under rules adopted by the State Board of Education, shall employ teachers who:

2402 (i) are licensed; or

2403 (ii) on the basis of demonstrated competency, would qualify to teach under alternative  
2404 certification or authorization programs.

2405 (b) The school's governing body shall disclose the qualifications of its teachers to the  
2406 parents of its students.

2407 (5) State Board of Education rules governing the licensing or certification of  
2408 administrative and supervisory personnel do not apply to charter schools.

2409 (6) (a) An employee of a school district may request a leave of absence in order to  
2410 work in a charter school upon approval of the local school board.

2411 (b) While on leave, the employee may retain seniority accrued in the school district and

2412 may continue to be covered by the benefit program of the district if the charter school and the  
2413 locally elected school board mutually agree.

2414 (7) Except as provided under Subsection (8), an employee of a charter school shall be a  
2415 member of a retirement system or plan under Title 49, Utah State Retirement and Insurance  
2416 Benefit Act.

2417 (8) (a) At the time of application for a charter school, whether the chartering entity is  
2418 the State Charter School Board or a school district, a proposed charter school may make an  
2419 election of nonparticipation as an employer for retirement programs under:

2420 (i) Title 49, Chapter 12, Public Employees' Contributory Retirement Act [~~and under~~];

2421 (ii) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act[~~;~~]; and

2422 (iii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

2423 (b) A charter school that was approved prior to July 1, 2004 may make an election of  
2424 nonparticipation prior to December 31, 2004.

2425 (c) An election provided under this Subsection (8):

2426 (i) shall be made at the time specified under Subsection (8)(a) or (b);

2427 (ii) shall be documented by a resolution adopted by the governing body of the charter  
2428 school;

2429 (iii) is in effect unless the charter school makes an irrevocable retraction of the election  
2430 of nonparticipation in accordance with Subsection (9); and

2431 (iv) applies to the charter school as the employer and to all employees of the charter  
2432 school.

2433 (d) The governing body of a charter school may offer employee benefit plans for its  
2434 employees:

2435 (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act;

2436 or

2437 (ii) under any other program.

2438 (9) (a) A charter school that made an election of nonparticipation as an employer for  
2439 the following retirement programs [~~under Title 49, Chapter 12, Public Employees' Contributory~~  
2440 ~~Retirement Act and under Title 49, Chapter 13, Public Employees' Noncontributory Retirement~~  
2441 ~~Act,~~] may subsequently make an irrevocable retraction of the election of nonparticipation[~~;~~];

2442 (i) Title 49, Chapter 12, Public Employees' Contributory Retirement Act;

2443 (ii) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act; or

2444 (iii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.

2445 (b) A retraction provided under this Subsection (9):

2446 (i) shall be documented by a resolution adopted by the governing body of the charter

2447 school;

2448 (ii) is a one-time election;

2449 (iii) is irrevocable; and

2450 (iv) applies to the charter school as the employer and to all employees of the charter

2451 school.

2452 (10) The governing body of a charter school shall ensure that, prior to the beginning of

2453 each school year, each of its employees signs a document acknowledging that the employee:

2454 (a) has received:

2455 (i) the disclosure required under Section 63A-4-204.5 if the charter school participates

2456 in the Risk Management Fund; or

2457 (ii) written disclosure similar to the disclosure required under Section 63A-4-204.5 if

2458 the charter school does not participate in the Risk Management Fund; and

2459 (b) understands the legal liability protection provided to the employee and what is not

2460 covered, as explained in the disclosure.

2461 Section 66. Section **67-22-1** is amended to read:

2462 **67-22-1. Compensation -- Constitutional offices.**

2463 (1) The Legislature fixes salaries for the constitutional offices as follows:

2464 (a) governor: \$109,900;

2465 (b) lieutenant governor: 95% of the governor's salary;

2466 (c) attorney general: 95% of the governor's salary;

2467 (d) state auditor: 95% of the governor's salary beginning

2468 June 28, 2008; and

2469 (e) state treasurer: 95% of the governor's salary.

2470 (2) The Legislature fixes benefits for the constitutional offices as follows:

2471 (a) Governor:

2472 (i) a vehicle for official and personal use;

2473 (ii) housing;



(iii) household and security staff;  
 (iv) household expenses;  
 (v) retirement benefits as provided in Title 49;  
 (vi) health insurance;  
 (vii) dental insurance;  
 (viii) basic life insurance;  
 (ix) workers' compensation;  
 (x) required employer contribution to Social Security;  
 (xi) long-term disability income insurance; and  
 (xii) the same additional state paid life insurance available to other noncareer service employees.

(b) Lieutenant governor, attorney general, state auditor, and state treasurer:  
 (i) a vehicle for official and personal use;  
 (ii) the option of participating in a:  
(A) state retirement system [established by] in accordance with Title 49[;];  
(I) Chapter 12, Public Employees' Contributory Retirement Act[; or];  
(II) Chapter 13, Public Employees' Noncontributory Retirement Act[;]; or  
(III) Chapter 22, New Public Employees' Tier II Contributory Retirement Act; or [in a]  
(B) deferred compensation plan administered by the State Retirement Office, in  
 accordance with the Internal Revenue Code and its accompanying rules and regulations;

(iii) health insurance;  
 (iv) dental insurance;  
 (v) basic life insurance;  
 (vi) workers' compensation;  
 (vii) required employer contribution to Social Security;  
 (viii) long-term disability income insurance; and  
 (ix) the same additional state paid life insurance available to other noncareer service employees.

(c) Each constitutional office shall pay the cost of the additional state-paid life insurance for its constitutional officer from its existing budget.

Section 67. **Effective date.**

2505

This bill takes effect on July 1, 2010.